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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

NO. 81-2318

STATE OF FLORIDA,

Petitioner,

-vs-

CONSTANTINO CASAL and
OMAR GARCIA,

Respondents.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF FLORIDA

JOINT APPENDIX

JIM SMITH
Attorney General

CAROLYN M. SNURKOWSKI
Assistant Attorney General
The Capitol, 1502
Tallahassee, FL 32301-8048
(904) 488-0290

COUNSEL FOR PETITIONER

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IN THE CIRCUIT COURT OF THE
16th JUDICIAL CIRCUIT OF
THE STATE OF FLORIDA, IN
AND FOR MONROE COUNTY

- - - - - - - - - - - - - - -

STATE OF FLORIDA

-vs- CASE NO. 77-853-

CONSTANTINO CASAL CF-A-B-31

OMAR GARCIA

Defendant

- - - - - - - - - - - - - - -

MOTION TO SUPPRESS EVIDENCE

COMES NOW Defendant by and through his undersigned attorney, pursuant to Rule 1.190(h)(1), Florida Criminal Procedure Rules, and respectfully moves this Court to suppress as evidence in this cause all tangible items of property and other evidence seized by the police from the Defendant, his automo-

bile, or his premises.

As grounds therefore, the Defendant would show to the Court that the above-mentioned evidence was obtained by the police as a result of an unreasonable search and seizure in violation of the Defendant's rights guaranteed by the Fourth and Fourteenth Amendment [sic] to the United States Constitution in that:

1. The property was illegally seized without a warrant.

2. That the arrest was illegal and in violation of the Defendant's Constitutional rights.

3. That the result of the illegal arrest should be suppressed.

4. The subject property and evidence was illegally seized in violation of the provision of Chapter 933, Florida Statutes.

5. That the search was not incidental to lawful arrest.

6. That it was not a consent search.

7. That it was not an inventory search.

8. That the officers had no probable cause to search the vehicle.

9. Evidence to be suppressed is in excess of One Hundred pounds of marijuana.

10. Factual Situation:

The Defendant was lawfully operating a vessel in Monroe County, Florida. The Defendant was stopped on mere suspicion. There was no probable cause for arrest as for a search and seizure of the Defendant's property.

The Officers commenced to search the vessell [sic] without consent and without proper authority.

/s/
MANUEL W. JAMES
Attorney for Defendants
P. O. Box 1057
Key West, Florida 33040

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Motion was delivered to the Office of the State Attorney, Monroe County Courthouse Annex, Key West, Florida, this 3rd day of April, 1978.

/s/
MANUEL W. JAMES

IN THE CIRCUIT COURT OF THE
16th JUDICIAL CIRCUIT OF
THE STATE OF FLORIDA, IN
AND FOR MONROE COUNTY

STATE OF FLORIDA

-vs- CASE NO.

CONSTANTIO [sic] CASAL 77-853-CF

OMAR GARCIA

Defendant

MOTION TO SUPPRESS CONFESSION

COMES NOW the Defendant, CONSTANTIO [sic] CASAL and OMAR GARCIA, by and through his undersigned attorney, pursuant to Rule 1.190(i), Florida Criminal Procedure Rules, respectfully moves this Court to Suppress as evidence at the trial in the above-styled cause all written and oral statements made by the Defendant to the police or other

agents of the State of Florida.

As grounds for this Motion, Defendant states:

1. The written and oral statements were obtained from the Defendant in violation of the Defendant's privilege against self-incrimination and the Defendant's right to counsel guaranteed by the Fifth, Sixth and Fourteenth Amendments to the United States Constitution as interpreted by the United States Supreme Court in MIRANDA v. ARIZONA, 384 U.S. 436, 86 S.Ct. 1602, 16 L. Ed. 2d 694 (1966).

2. That the Defendant allegedly made certain incriminating statements to the Police or State agents, after his arrest on the date charged in the Information, without being informed of his rights of silence and to counsel.

3. The written and oral statements

obtained from the Defendant were not freely and voluntarily given, in violation of the Defendant's rights guaranteed by the Due Process Clause of the Fourteenth Amendment of the United States Constitution and by Article I, Section 9 of the Florida Constitution (1968).

4. The written and oral statements were obtained from the Defendant in violation of the Defendant's right to be free of unreasonable searches and seizure guaranteed by the Fourth and Fourteenth Amendments of the United States Constituion [sic]. Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407, 9 L. Ed. 2d 441 (3rd DCA Fla. 1967) [sic].

5. The written and oral statements were obtained from the Defendant in violation of Fla. Stat. Sec. 901.06 and Sec. 901.23 Oliver v. State, 250 So. 2d

888 (Fla.).

6. The written and oral statements obtained from the Defendant are not supported by an independent prima facie proof of the corpus delecti of the crime for which the Defendant is charged.

Respectfully submitted,

/s/
MANUEL W. JAMES
Attorney for Defendant
P. O. Box 1057
Key West, Florida 33040

I HEREBY CERTIFY that a true and correct copy of the above Motion to Suppress Confession was delivered to the State Attorney Office, Monroe County Courthouse Annex, Key West, Florida, this 20th day of September, 1978.

/s/
MANUEL W. JAMES

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT (CRIMINAL DIVISION) IN AND FOR MONROE COUNTY, FLORIDA

STATE OF FLORIDA

vs. Case No. 77-853

CONSTANTINO CASAL
OMAR GARCIA

HEARING ON MOTION TO SUPPRESS EVIDENCE AND CONFESSION

This cause on to be heard before the Honorable Bill G. Chappell, Judge of the Circuit Court, Criminal Division, on September 20, 1978.

APPEARANCES:

RICHARD FOWLER, Assistant State Attorney, on behalf of the State.

MANUEL W. JAMES, Attorney-at-law, on behalf of the Defendant.

THEREUPON:

THE COURT: Constantino Casal and Omar

Garcia, Case Number 77-853, is the State ready?

MR. FOWLER: Yes, sir.

THE COURT: Is Defense ready?

MR. JAMES: Yes, sir, subject to a motion, we have some outstanding motions which I suggest should be heard pre-trial, I've got a motion to suppress. It's been filed for some time.

THE COURT: The Court finds the motion legally sufficient. Is the State ready to proceed?

MR. FOWLER: Your Honor, I contacted both of my officers and they are both on their way, th

THE COURT: When are they supposed to get here?

MR. FOWLER: They should be here within 15 minutes.

Thereupon, at 11:25 A.M.

THE COURT: Are we going to hear both

of them together, is that what you said, we've got two motions here.

MR. JAMES: Yes, sir, I think all the testimony can be taken at one time.

THE COURT: The Defense wants to present evidence supporting your position?

MR. JAMES: No, sir, it's a warrantless search, I'd like a stipulation from the State that the search is not based on a search warrant, it's a warrantless search.

MR. FOWLER: There was no warrant.

MR. JAMES: Let the record reflect that stipulation between the Defense and State, there is no search warrant involved in this case. I have no evidence to present.

THE COURT: That is your basis. Is the State ready to proceed.

MR. FOWLER: Yes, sir, the State calls Mark Walker.

THEREUPON, MARK WALKER, was called as a witness and after being duly sworn, testified as follows:

DIRECT-EXAMINATION

BY MR. FOWLER:

Q. State your name and occupation, please?

A. Mark Walker, I'm employed with the Florida Marine Patrol.

Q. Were you employed by them on the 18th of September, of last year?

A. Yes, sir, I was.

Q. Did you have occasion on the early morning hours of that date to be on marine patrol?

A Yes, sir, I was.

Q. What area were you patrolling?

A. I was patrolling from Key West on the ocean side to Munson Island.

Q. Did you have occasion to approach a

boat in the early morning hours of the 18th?

A. Yes, sir, the evening of the 17th, I was on patrol, it was the morning of the 18th that I encountered the boat.

Q. Will you describe the boat, please?

A. Yes, sir, it is approximately a 45 foot, 45 or 49 foot commercial type of vessel, it has a wheel house on the back, as we approached and put the light on it, it had a large number of wired traps that are commonly used for fish traps, it had a puller on the side of the boat that is used to pull different types of traps.

Q. Officer Walker, were you one the lookout for anything particular in that area that evening?

A. Yes, sir, we worked in this area at the request of the supervisors because we had had a large number of complaints, several complaints of traps being robbed,

crawfish traps being robbed up in that area, the fisherman seemed to think that it might have been occurring during the night-time hours because they are out there pretty much during the day time pulling their traps.

Q. What did you do upon approaching this boat?

A. As we approached from the stern of the boat, I come out to the starboard side of it and about 50 feet from the stern of it we turned our spotlight on, Officer with me, Jenna, I asked her to put the spot-light on and we proceeded up besides the boat, a gentleman stopped out of the wheel-house, I advised him I was Florida Marine Patrol and requested that he take his engines out of gear or stop his boat, that I would like to check his papers.

Q. And did he comply with that request?

A. Yes, sir, he did, he stopped the boat, I swung, went up around the bow of the boat and brought my boat up along side of his, towards the stern part of his boat.

Q. What happened next?

A. Two gentlemen come out of the wheelhouse, I identified myself as Mark Walker, again with the Marine Patrol and I told them that I would like to check their registration papers for their boat?

Q. And did they produce the registration papers?

A. At first he handed me a white piece of paper with the tax receipt, taxes paid on the boat, I assumed was paid on the boat, I told him that that wasn't what I wanted to see, that I needed a small square piece of paper which was a Florida Registration Certificate, he returned and handed me the documentation papers for the vessel and I asked him if he was a captain,

I don't remember whether he replied whether he was the captain or not, I asked him if he was the signed on captain. The documentation papers reflected a man's name but it wasn't Mr. Garcia's name, he said that the boat was in the owner's name, I asked him again for the registration certificate and he stated that the owner must not have put it on the boat.

Q. Okay, then what happened?

A. Due to the weather situation out there that night, I asked if it would be all right, asked permission for to come aboard the boat at which time Officer Soli stepped up into the seat of the patrol boat and Mr. Garcia and his mate assisted her and helped her aboard the boat. After she had boarded the boat, I moved my boat a few feet away from the boat so that the two boats wouldn't be together.

Q. Okay, then what happened?

A. I laid off to the side there, Officer Soli went into the wheelhouse, she appeared out on the back deck, Mr. Garcia was standing on the doorway to the back of the boat there with her, she opened up the compartment on the back, it's a wooden box that contained the groceries and she told me that there was hardly any ice and very little groceries in there and what was in there appeared to be rotten.

Q. Okay, and then what happened?

A. She walked up, back up into the cabin and walked out on the other side of the boat and started up towards the front of the boat. I don't recall exactly whether she asked to check the ice although I'm sure she asked to check the ice hole, Mr. Garcia asked if we had a search warrant and I advised him no that we didn't need one because we weren't searching the vessel

and that he was under arrest for failure to have a registration on the boat.

Q. Then what if anything did any of the individuals on board say?

A. Mr. Garcia stated, 'well there is no need to go any further, the boat is loaded with grass'.

Q. Was that in response to any questions by you?

A. No, sir.

Q. Any prompting by you for a response?

A. No, sir, it wasn't.

Q. Then what happened?

A. I immediately maneuvered my boat back alongside of his boat, I asked Mr. Garcia and the other gentleman if they would come over to the side of the boat where I advised them of their rights.

Q. How did you advise them of their rights?

A. Of the Miranda card that I have in my billfold.

Q. You have that card with you today?

A. Yes, sir, I do.

Q. Will you indicate to the Court how you advised these individuals of their rights?

A. I maneuvered by boat up to the side, we stopped alongside of the boat, I had my spotlight laying on the console which is like a desk by me, the mate, I can't remember how you pronounce his name, Casal, was holding on to my windshield and I held my billfold up with my Miranda card in it and I read the Miranda Rights.

Q. Will you read them now, please?

A. You have the right to remain silent; any thing you say can and will be used against you in a court of law; you have the right to talk to a lawyer and have him present while you are being questioned; if

you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish; you can decide at any time to exercise these rights and not answer any questions or make any statements. Do you gentlemen understand your rights. Mr. Garcia acknowledged that he understood his rights.

Q. What statements if any did either of the two defendants make subsequent to that?

A. I then asked Mr. Garcia, I said 'Mr. Garcia, what do you have on the boat', he stated, 'marijuana', I asked him, 'how many bales', he replied he didn't know, I says, 'do you have any idea how many pounds: he replied he didn't have any idea, and I asked him if he would assist Officer Soli in opening the forward hatch to verify what he had told me, Mr. Garcia and the mate went forward, they moved some

fishtraps out of the way, and lifted the hatch cover, when they did this, a strong odor that I had smelled on previous occasions emitted from the compartment, it smelled like that of marijuana.

Q. Office Walker, prior to this time, prior to the time of the arrest did either of the individuals indicate to you where they were coming from or where they were fishing?

A. Yes, sir, when I was checking the papers, I didn't recognize the boat from being out of Key West and I asked the captain where he was fishing out of, what fishhouse, he said he has fished out of Miami and that he had moved down to Woodsy Niles, he had fished out of there one day and that he was on his way to Cay Sal to go fishing.

MR. FOWLER: I have no further questions of Mr. Walker.

THEREUPON: CROSS-EXAMINATION

BY MR. JAMES:

Q. Did Mr. Casal make any statement to you?

A. No, sir.

Q. Did Mr. Casal speak English?

A. Not to my knowledge he never spoke any English in my presence.

Q. Did you inform him of his rights in Spanish, are you fluent in Spanish?

A. No, sir, I'm not.

Q. Is Jenra Soli fluent in Spanish?

A. Not to my knowledge.

Q. Would you describe the weather conditions for me that night?

A. The weather was clear, probably had a 10 or 15 knot wind out of the east, easterly direction.

Q. What was it necessary for Officer Soli to go aboard the boat, then?

A. The two boats were banging up

against each other and it's kind of hard for a man hanging down over the side of the boat to give you the papers or try to explain to him what papers that you were wanting for the boat.

Q. What was the purpose of Officer Soli going aboard the vessel?

A. To check the registration for the boat.

Q. Hadn't Mr. Garcia already told you that there was no registration, hadn't he already furnished you with the documentation papers and receipt that the taxes had been paid on said vessel?

A. Yes, sir.

Q. And hadn't he told you that the owner apparently did not put the registration on said vessel?

A. He said that the owner may not have put the registration papers aboard the boat.

Q. You already knew that when you sent Officer Soli aboard the boat, didn't you?

A. I didn't send her aboard.

Q. How did she get aboard, weren't you senior in command on the marine patrol velles?

A. Yes, sir.

Q. Did she go aboard on her own without supervision or direction from you?

A. She went aboard the boat to check the papers, to further check for the papers.

Q. The papers that you knew didn't exist.

A. I didn't know they didn't exist.

Q. Was she checking for the papers when she went back to this back compartment and opened up and looked in the groceries was she looking for the registration papers then?

A. No, sir.

Q. Was she looking for registration papers when she went and looked in the ice hole in the back where she looked, where you say there was very little ice, was she looking for registration papers then?

A. No, sir.

Q. Hadn't she gone aboard the vessel to search the vessel?

A. No, sir.

Q. So then why did she look on those holes? If she didn't open those holes to look for the papers and she wasn't searching, why was she looking at them?

MR. FOWLER: Your Honor, I don't feel that this witness is qualified to testify as to why Officer Soli did whatever Officer Soli did, she will be called as a witness to indicate why she did whatever she did.

THE COURT: I think the questions are directed as to whether this witness made any direction or ordered her or whatever.

MR. JAMES: Yes, sir.

THE COURT: I'll let you go ahead on that basis.

Q. Okay, did you direct Officer Soli to look for the registration papers in the grocery compartment?

A. No, sir, I asked Officer....

Q. Just answer my question, yes or no. Did you direct Officer Soli to look for the registration papers in the back ice hole?

A. No, sir.

Q. Did you see her look in those ice holes and the grocery compartment?

A. Yes, sir.

Q. Now, prior to Officer Soli going on that boat, Mr. Garcia had already told you that there was no registration paper on the boat, right?

A. He advised he didn't know whether

the owner put the papers on the boat or not.

Q. He had been unable to produce any registration papers, right?

A. Yes, sir.

Q. Did you place him under arrest at that time?

A. No, sir, I didn't.

Q. Didn't you place him under arrest only after he refused to give you consent to search the vessel?

A. No, sir.

Q. You didn't say that on direct testimony that after that you all asked to check the ice hole that he asked if you had a search warrant, you said you didn't need a search warrant and then that you arrested him because of no registration, you didn't say that to Mr. Fowler about five minutes ago, exactly in that order?

A. I stated that Mr. Garcia asked if we had a search warrant and I advised him that we did not have a search warrant that we were not searching the boat.

Q. You didn't tell them you didn't need one?

A. I didn't need a search warrant, I wasn't searching the boat.

Q. What do you call Officer Soli looking in the, opening up and looking in the compartment where the groceries were and opening up and looking where the ice is, you don't call that a search?

A. I don't know whether she asked Mr. Garcia if she could check what was in the compartment back there, I do 't know whether that was a search or not.

Q. Okay, you don't have an opinion as a marine patrol officer if that was a search or not?

THE COURT: I'm not going to let you ask him his opinion as to what somebody else did.

Q. Okay, but you saw her open up and look in the compartments?

A. Yes, sir.

Q. You saw her open up and move whatever she had to move to be able to go down and look into the ice hole, right?

A. No, sir, it wasn't an ice hole, it was a box built up on the transom of the boat.

Q. Did you see her remove the top or something so that she could look into that wood box?

A. Yes, sir, she lifted the lid on the box.

Q. And that was prior to Mr. Garcia being arrested?

A. Yes, sir.

Q. And at what point and time was Mr. Garcia arrested, didn't it come after he refused to allow the vessel to be searched and asked about a search warrant?

A. Yes, sir.

Q. And at that point and time he was under arrest where was he, did you then order him to come over to your vessel?

A. Over to the side of his boat, yes, sir.

Q. What type of crime is it not to have the registration on board?

A. Second degree misdemeanor.

Q. Do you ordinarily write a summon for that or do you take the people into custody?

A. It depends whether they are residents of Monroe County or not.

Q. Did you ascertain the residency of Mr. Garcia?

A. It depends whether they are residents of Monroe County or not.

Q. Did you ascertain the residency of Mr. Garcia?

A. He advised that he had just started fishing out of Woodsy Niles for one day.

Q. Did you ask him where he was a resident of?

A. No, sir.

Q. Did you write him a summons?

A. No, sir.

Q. You described the weather as being clear that night, right?

A. Yes, sir.

Q. And, did you give direction to Mr. Garcia to open up any other holes?

A. Only after he said what he had on the boat.

Q. Okay, at that point you hadn't seen any marijuana, correct?

A. No, sir.

Q. At that point you hadn't smelled any marijuana?

A. No, sir.

Q. Did Mr. Garcia, had you warned Mr. Garcia of his rights prior to his statement about the boat containing marijuana?

A. No, sir.

Q. Had you been asking Mr. Garcia several questions from the time that you stopped the vessel prior to warning him of his rights?

A. I asked him several question, yes, sir.

Q. He was answering your questions, correct?

A. Yes, sir, in relation to the papers of the boat and where he fished out of.

Q. And at that point from the time that you stopped Mr. Garcia, was he free to leave if he just said, 'I just want to go

ahead and go', would you have let him go on?

A. Not without producing some papers of some kind, no, sir.

Q. Okay, and he'd been as far as you know, when you stopped the vessel legally and lawfully on his way coming down Hawk Channel, what is the name of the channel?

A. Hawk Channel, yes, sir.

Q. He was coming down Hawk Channel, right?

A. Yes, sir.

Q. You caused the boat to stop, correct?

A. Yes, sir.

Q. You then started these questions and answers, correct?

Q. Of the registration for the boat, yes, sir.

Q. And prior to his statement about the marijuana on board, you had reason to

believe that he did not have a registration, is that correct?

A. He hadn't produced one at that time, no, sir.

Q. Okay, is the registration necessary to be on board every vessel in Florida waters?

A. Whenever it is in operation, yes, sit.

Q. What about a vessel from, let's say, a vessel that's home ported in Texas, when you say operated do you mean moving through our waters or do you mean fish in our waters and landing crawfish or what have you in our waters?

A. If they're commercial fishing in Florida they have to commercial registration.

Q. Had you ever seen this vessel commercial fishing in Florida waters?

A. No, sir.

Q. Didn't the man tell you that the vessel was going to be commercial fishing in Cay Sal area?

A. Yes, sir.

Q. Is Cay Sal in Florida waters?

A. No, sir.

Q. He just told you that he had been out of Woodsy Niles, right?

A. If he was selling his fish in the State of Florida, at Woodsy Nile's which is in Monroe County, Florida he would have to have a Florida registration aboard the boat.

Q. Had you ever seen him sell any fish in the State of Florida?

A. No, sir.

Q. Had anybody ever told you that he sold you any fish in the State of Florida?

A. No, sir.

Q. Did you have any reason to believe that he had sold fish in the State of

Florida, nobody had ever told you, you never seen it?

A. I had the man's statement that he fished out of Miami and that he had just moved down to Woodsy Niles for one day.

Q. They moved down to Woodsy Niles for one day, he didn't tell you that he sold any fish in the State of Florida, he didn't tell you that he commercial fished in Florida waters, right?

A. No, sir.

Q. And nobody ever told you that that vessel had been commercially fished in Florida waters or that the catch from said vessel was sold inside the territorial waters of Florida, right?

A. No, sir.

Q. And, if he did not fish in Florida waters and if he did not sell his catch in Florida waters, he did not need a Florida registration, right?

A. If he operates out of a port of Florida, yes.

Q. That is if you fish here and if you sell your catch here, right?

A. Yes, sir.

Q. And if you don't sell your catch here and if you don't fish in Florida waters you don't need one?

A. No, Sir.

Q. Did you make any comments to Jenna Soli whatsoever concerning the possibility of marijuana being aboard this vessel prior to your stopping of the vessel?

A. No, sir, I did not.

Q. You told her nothing whatsoever?

A. No, sir.

Q. Did you call on your radio to your home station or anything like that when you decided to approach this vessel?

A. No, sir, I did not, it was after midnight, at that time we did not have a

dispatcher that was on the radio after midnight.

Q. What time did you stop the vessel?

A. Just after midnight, in the proximity of the midnight hour between the 17th and going into the morning of the 18th.

Q. Give me some hours to work with?

A. Twelve o"clock.

Q. Didn't you request or give direction to Mr. Garcia and Mr. Casal to open up the forward ice holes so Office Soli could search and look down there?

A. Yes, sir, after he had advised me that there was grass and then after I advised him of his rights that there was marijuana on the boat. I asked him if he would assist her in opening the hatch.

Q. And he acquiesced in your direction and did so?

A. Yes, sir, he did, she couldn't lift the hatch by herself.

Q. At the time that you searched the vessel, the Captain was already under arrest, right?

A. Yes, sir.

Q. Was the vessel in such a place that it could be anchored?

A. Not readily, no, sir.

Q. Was it a short place from safe anchorage?

A. I would say yes.

Q. Did you give the captain the option of accompanying you and allowing the vessel to continue on with the mate?

A. No, sir, not after the man advised me the boat was loaded with marijuana.

Q. Prior to the time that you opened up the hole, all you had was his bare statement, right?

A. Yes, sir.

Q. And at that time you hadn't seen or smelled or observed anything which you thought to be contraband?

A. No, sir.

Q. And then I asked you if you gave him the option of anchoring the vessel and accompanying you or allowing the vessel to continue on under the direction of the mate.

A. It's a documented boat, I don't normally take the captain off a documented boat whether he is assigned on captain or not, I don't normally take a captain off of a documented vessel, under the circumstances out there, in the middle of Hawk's Channel, midnight, I don't think I'd be using sound judgment doing such.

Q. Tell me all the conversation that you overheard from your vessel that took place on the other vessel?

A. I don't know what you're referring to.

Q. Tell me anything you heard, tell me what conversations you overheard, you never went aboard said vessel until it reached back to Key West, right?

A. Right.

Q. When you were out there side by side, I just want to know, from your boat what exact words or conversation you overheard on the other boat?

A. I heard Jenna ask Mr. Garcia about the registration papers, something

about some safety equipment after which she appeared on the back deck,

Q. Where did she appear from?

A. She went in the side door.

Q. Of the wheel house?

A. Yes, sir, which is the wheel house and the cabin is all the same, the bunks are on the back part of it the wheel is up forward, the kitchen is in the right, at the start end part of it, she walked out the back door of the boat of the wheel house cabin where her and Mr. Garcia were standing, there were some words exchanged.

Q. Tell me what you could overhear, tell me the exact words.

A. The next she called over to me and she said, 'Mark, there is no ice in this box and there is very little groceries and what are here look rotten.'

Q. Okay, did that cause any suspicion in your mind?

A. Yes, sir, it sure did, the man said he was going to Cay Sal, you wouldn't very well go with rotten groceries, plus the fact that he didn't know anything about where the registration papers were at and he wasn't the signed on Captain had my suspicion aroused, he said he had fished out of Woodsy Niles for one day which he could have.

Q. Under arrest for no registration, right?

A. Right, then afterwards, you asked me what I heard from the boat.

Q. I just want to know what you heard.

A. After I advised Mr. Garcia that he was under arrest for not having registration, he replied, that there was no need to go any further, the boat is loaded with grass, at which time I moved back to the side of his vessel.

Q. And what did you do then?

A. That is when I advised him of his rights.

Q. Okay, so then when, and that's the way it happened, what you just told me, right?

A. Yes, sir.

Q. Okay, so now you just told me that when Officer Soli said that she wanted to go up and check the forward part of the boat, right?

A. She asked consent to check the forward hole, yes, sir.

Q. And he said no and wanted to know if you all had a search warrant?

A. Yes, sir?

Q. You then replied to him, after you evaluated the circumstances, you told him that you did not need a search warrant, right?

A. Yes, sir, we were not searching the vessel, I stated that earlier.

Q. But you told him you did not need a search warrant.

A. I stated that earlier, I said . . .

Q. Just answer my question.

A. I advised him I didn't need a search warrant.

Q. Okay, in reply to my question, you've given us a narrative and now I want to go through with it, okay?

A. All right, sir.

Q. You told him after evaluation that you did not need a search warrant, that you weren t searching the vessel.

A. Right.

Q. Okay, yet Officer Soli had informed him that she wanted to go and check the forward ice hole, right?

A. She asked if she could check the forward ice hole.

Q. She was not given permission to check the forward ice hole.

A. No, sir.

Q. So then you informed him that you did not need a search warrant, did you inform him that you intended to search the vessel anyway, that you didn't need a search warrant?

A. My intent wasn't to search the vessel.

Q. Okay, you then placed him under arrest for not having the registration on board, right?

A. Yes, sir.

Q. Subsequently to placing him under arrest for not having a search warrant, did Officer Soli or you communicate your intent to go check the forward ice hole?

THE COURT: He did not arrest him for not having a search warrant.

Q. Excuse me, you arrested him for not having registration on board, right?

A. Yes, sir.

Q. Did you or Officer Soli then communicate your intent to check the forward ice hole of the vessel?

A. No, sir, I didn't, I don't know whether Officer Soli did or not.

Q. Did you make any apparent attempt, or did Officer Soli make an attempt to go check the forward ice hole at that time?

A. She was already standing on the forward part of the boat.

Q. Okay, then subsequently to being arrested is when Mr. Garcia told you that there was no sense checking the forward ice hole because there was grass in

it, right? Isn't that what you told me a couple of minutes ago?

A. Wait a minute now, will you rephrase that question, I mean, will you state that question again.

Q. After being arrested, after you told him, 'you're under arrest for not having registration on board, Officer Soli is up in the front on top of the ice hole, isn't that when you told him, isn't that after you told him, 'you're under arrest for not having registration on board, right, and Officer Soli is up there, isn't that when he replied to you, well, there is no sense checking the forward ice hole, because there is marijuana on board?

A. When Officer Soli asked to check the forward hole, Mr. Garcia asked about the search warrant.

Q. It's a real simple question, I want to know if the arrest didn't come

before the statement, 'there is no sense checking the forward ice hole, there is marijuana on board', isn't that what you told me about two minutes ago?

A. That the arrest occurred before?

Q. His statement.

A. Yes, sir.

Q. Okay, the arrest happened first, then he came out with his statement.

A. Yes, sir.

Q. And said, 'no sense checking the forward ice hole, there's marijuana in it, right?

A. Yes, sir.

Q. And then you asked him or he acquiesced with your direction to go help Officer Soli lift up whatever covered the forward ice hole, right?

A. After he had been advised of his rights he said again, that there was marijuana on the boat.

Q. Okay, but the first time that he said there was marijuana on the boat was after the arrest and prior to the warning of rights, right?

A. Yes, sir

Q. Okay, so he had already been arrested, he told you that and you then formally warned him of his rights and then you asked him again, is there marijuana on board, right?

A. I asked him what was on the boat and he stated, 'marijuana', the first time he said, 'the boat is loaded with grass'.

Q. Okay, and subsequent to all that you then directed, he wasn't free to move, you weren't going to let him take the boat anywhere, were you?

A. Not at that time, no sir, I was not.

Q. You then, you or Officer Soli through you went ahead and searched the forward hole?

A. With the assistance of the mate and the captain of the vessel, they went up and they moved the fish traps off the top of the ice hole where the hatch was at and they lifted the hatch themselves, like I say, the hatch was too heavy for Officer Soli to lift by herself, I don't know whether I could have lifted it by myself or not.

Q. Your primary reason for believing that marijuana was on board the vessel was Garcia's statement to you that the boat was loaded with grass, right?

A. Yes, sir.

MR. JAMES: Thank you, I have no further questions.

THEREUPON, REDIRECT-EXAMINATION

BY MR. FOWLER:

Q. Officer Walker, you refer to Woodsy Niles a couple of times, what is Woodsy Niles?

A. Woodsy Niles is a fish house that's located on Stock Island on the eastern end of Stock Island on the south side. They buy fish, craw fish, stone crabs, they supply fishermen with their supplies.

MR. FOWLER: Thank you.

MR. JAMES: I have no other questions of this witness.

MR. FOWLER: The State will call Jenna Soli.

THEREUPON, JENNA SOLI was called as a witness and after being duly sworn, testifed as follows:

DIRECT-EXAMINATION

BY MR. FOWLER:

Q. State your name and occupation, please?

A. Jenna S. Strecher, Florida Marine Patrol Officer.

Q. How long have you been with the Marine Patrol?

A. Approximately a year and a half.

Q. During that time have you ever been known by any other name by the Marine Patrol?

A. Jenna Stretcher Soli.

Q. You were employed by the Marine Patrol on the 18th of September of last year?

A. Yes, I was.

Q. Were you on patrol on the early morning hours of that day?

A. Yes.

Q. Who were you with?

A. Officer Mark Walker.

Q. Did you have the occasion to stop any boat during the early morning hours of that day?

A. Yes, I did.

Q. Will you described what boat is was, describe the boat?

A. It was a large, white, blue trimmed fishing vessel, several wire fish traps on it and the San Rafael written on it.

Q. Was there any particular reason you were patrolling that area, anything special you were on the lookout for?

A. Yes, there was, there had been a lot of trap robbing, lobster traps in the area and Officer Walker and I had been routinely checking the area for boats.

Q. When you came up to this particular boat, the San Rafael, what did you do?

A. Officer Walker told me approximately 50 feet from the boat to put the spotlight on the boat, and we came

alongside the boat, two men came out of the cabin, we identified ourselves as Florida Marine Patrol.

Q. How were you dressed?

A. We were in uniform, both of us.

Q. What happened then?

A. We advised the men that we would like to see their papers, registration papers from the boat.

Q. Did they produce any?

A. They came out with an envelope, handed Mark Walker a piece of paper which I didn't personnally observe myself, cause I was holding the boat off the side, the second piece of paper I did see, it was documentation papers, I saw them, you know, they were pretty obvious, they are about this long and I could see the printing on them, documentation papers.

Q. To your knowledge did you see any Florida Registration papers produced?

A. No, they could not produce registration.

Q. Did they make any statements concerning the registration papers?

A. Yes, after Officer Walker asked the third time for the papers, third or fourth time, he kept asking, 'we like to see the Florida Registration papers', the man said, 'I guess they must not have gotten them'.

Q. What happened next?

A. I request permission to board the boat and the gentleman granted permission and helped me aboard the boat.

Q. And what did you do once you got on board?

A. I went into the cabin with both gentlemen, I was going to try and help him find some more papers, that is what I

was trying to do, just routine safety check of the boat and I walked through the cabin, everything was sort of askew, I didn't tough anything in the cabin, I would just point.

Q. Was there anything in particular unusual about the cabin?

A. Well, like I said, it was pretty routine, I was looking for safety equipment, I didn't see any in open view and I asked him, I don't know if I asked him about safety equipment in particular, I was looking around if there was safety equipment, everything was torn up in the boat, we went towards the back of the boat and I asked him if I could see his catch that was on board.

Q. What was his reply?

A. He said that he didn't have any seafood on board at this time, he was going to be going out fishing at Cay Sal Bank.

Q. Did he give you any indication where he was fishing from?

A. Yes, he did, in previous conversation with Officer Walker, he had said that he had been to Woodsy Niles, he was from Miami, he had been to Woodsy Niles and he had just been there like one day, I don't know if he had iced up, this is the impression that I had that he had iced up there and that he was going to be fishing out of there.

Q. You asked him for permission to look in his icebox, what if anything did he say?

A. He said, 'yes, fine', so I looked in the back box there and there was some rotten food, no ice, which seemed a little strange since he'd just said that he was going to go fish at Cay Sal banks, it seemed like they didn't have sufficient food or any ice on board, at least as of this point.

Q. What happened then?

A. I said 'I'd like to check your forward hole'.

Q. What kind of hole or compartment are we talking about?

A. In most fishing boats they have a place where they normally store seafood products or their ice or whatever when they're going out to fish or coming back from fishing, this is the forward hole, it is a flat box built into the boat.

Q. It's a fishbox?

A. Yes.

Q. An what happened at this point?

A. Mr. Garcia said at this point, he asked me if I had a search warrant.

Q. Okay, and was there any response by you?

A. I said, 'no I don't have any search warrant but I would like to see what you have, you know, what seafood products you have, I'd like to check your forward catch box, I think I said it again.

Q. And what happened then?

A. I believe Officer Walker, upon hearing the gentleman say this, did state he'd be under arrest for not having the papers, the correct papers aboard the boat.

Q. And after Officer Walker informed the individual that he was under arrest, what statements if any did you hear?

A. Mr. Garcia then said that, 'there is no use of you going any further, there's grass aboard'.

Q. Was that in response to any questions by you to Mr. Garcia?

A. At this point, I believe it was after Officer Walker told them that he was under arrest for no registration.

Q. Was there any conversation between the time Officer Walker said 'you're under arrest' and Mr. Garcia stated, 'there is grass on the boat'?

A. All I remember is my saying that I would like to check his forward check, I don't remember any particular conversation, I don't recall any.

Q. Subsequent to that, did you in fact check the forward hole?

A. I didn't check it, Officer Walker called the gentlemen over to the side, both of them, of course after that statement he placed them both under arrest and read them the Miranda Warning, then he asked, both of them I guess but Mr. Garcia answered, now, what was aboard the boat and he said, there is marijuana on board.

Q. Will you describe the demeanor of these two individuals while this encounter was going on?

A. From the time that we went into the cabin, they seemed to be sort of agitated.

Q. What do you mean by agitated?

A. They were apprehensive, they were looking at each other a lot and, of course I didn't suspect anything at this point, I just sort of picked up on it that they were looking at each other a lot and after I check the back box and of course after we walked forward to the hole and they suddenly asked for a search warrant, that seemed a little strange to me too.

Q. Where exactly did you stop the San Rafael?

A. We had just passed Nine Foot Shoal Light on routine patrol.

Q. Approximately how far out is that?

A. After we passed the light it's about a mile and a half out, maybe two miles.

Q. Any possibility of it being over three miles?

A. No, we were definitely within our jurisdiction.

Q. Which is what?

A. Three miles on the ocean side to the nearest point of land.

Q. It was within the waters of Monroe County?

A. Yes.

MR. FOWLER: You may inquire.

THEREUPON:

CROSS-EXAMINATION

BY MR. JAMES:

Q. You said on the outside of the Nine Foot Shoal Light?

A. We were coming south, we were on patrol a little bit farther north of the Nine Foot Shoal Light and came down past the light, and up to that point, I don't know exactly how far Nine Foot Shoal is but we weren't more than a quarter of a mile from Nine Foot Shoal Light, if that.

Q. How far, from right were you were, how far does three miles go out from the point of land?

A. That I can't tell you, I don't know personally, as of this time I was very new and still don't know exactly.

Q. You're not exactly sure where three miles is out there, then, at this point, there is no reference marker?

A. Well, Nine Foot Light, I could see that it was blinking to the left of me, right when we passes it and then this boat was right here in the water.

Q. In what direction were you from Nine Foot Shoal Light?

A. That I can't tell you again, we had just passed it.

Q. You just passed it, north, south, east or west of it, I just want to know.

A. Okay, we passed it in the inside of the Nine Foot Shoal Light because apparently there were some shoals out there that Mark wanted to stay away from.

Q. Prior to your stopping of the vessel, that vessel, you didn't have any reason to believe that the vessel was doing anything but lawfully operating down Hawk's Channel, right?

A. He was stationary in the water when we first observed him.

Q. Okay, have you ever seen anybody rob traps from a shrimp boat, use a shrimp boat to go and rob traps?

A. That was not a shrimp boat, it had a trap puller on the front part of the boat.

Q. Did you see them take any action whatsoever which would be consistent with robbing traps, did you see them using spotlights in the water to spot the floats or anything like that?

A. No, sir.

Q. Did you see them move in a serial of small moves, stop, as if the were pulling traps?

A. Not at this time.

Q. So, you didn't have any reason to believe that that specific vessel was involved in any trap robbing, right?

A. No.

Q. What was your purpose in going aboard the vessel?

A. I felt that I was doing as a Marine Patrol Office Officer in checking

boats that were on the water and the boat couldn't produce the registration and I went aboard the boat for routine safety check.

Q. That's why you went aboard the vessel to perform that routine safety inspection check at midnight, is that why you went aboard this vessel?

A. It doesn't make any difference what time it is.

Q. Okay, I just want to know specifically why you went aboard the San Rafael.

A. In my mind?

Q. Yes.

A. To me, I was just doing my job, I had so suspicions when I went aboard the boat, the gentlemen could not produce the paper, I went on board the boat.

Q. When the gentlemen could not produce the registration papers, did you or

anyone else place him under arrest at that time?

A. No, sir.

Q. When you went in the wheelhouse, you were looking for what, the papers?

A. I would have helped them look further for papers, we didn't dig in anywhere.

Q. You went aboard but you didn't actually look for any. Did you or any other officer place the gentleman under arrest for any safety violation, any lack of safety equipment?

A. Not as of that point.

Q. Any any point, did you?

A. No.

Q. You didn't make any arrest aboard the San Rafael for lack of safety devices.

A. I didn't do a search for safety equipment, I just said I didn't see any in plain view.

Q. Okay, but that was your purpose on going on board, though.

A. There's many reasons why I went on board.

Q. I asked you why you went on board, did you perform a search for safety devices?

A. No, I didn't search for them.

Q. Were you looking for safety devices or documentation papers when you looked in the ice box on the back of the boat?

A. No, sir, I was looking for any kind of seafood products that he might have aboard the boat.

Q. Hadn't the captain told you that there was no such seafood on board?

A. Well, often people do that and we still say we'd like to see your catch.

Q. Okay, is that why you were searching the vessel looking for safety, I mean, looking for seafood products, was that your purpose in searching the vessel?

A. I asked him if I could see.

Q. What was your purpose of searching the vessel?

A. I didn't feel like I was searching, I was doing a routine check.

Q. For what?

A. For any kind of seafood product he might have had on board, in my mind, I was fresh out of school, I was checking the boat and doing my job.

Q. What about when you looked in the grocery box? Were you looking for seafood products or papers then?

A. Not for papers, for seafood products, yes.

Q. Where the groceries were, okay.

A. It was a regular catch box that is why I asked him if I could see it.

Q. What rights did you hear, if any, Officer Walker advise Garcia and Casal?

A. The Miranda Rights.

Q. Tell me what they are, did you hear him say, did you hear what rights he told them?

A. He read them off a card.

A. Yes, I remember hearing them, you have the right to remain silent.

Q. Tell me right now, exactly what words you recall Walker saying to the Defendants?

A. I don't have them memorized so I can't tell you.

Q. I didn't ask you to memorize anything, I just want you to think back and use your memory, tell me what you remember hearing that night of Walker telling the Defendants and if you don't remember you can tell me that too.

A. I remember that it was the Miranda Rights read off a card, but I can't tell you exactly what the wording was.

Q. Okay so you . . .

A. You have the right to remain silent, the right to have an attorney present, you can go on and on.

Q. Maybe my question isn't clear, I just think back to the night or early morning house of September 18th, you heard Officer Walker advise the Defendant of something, right?

A. Uh huh.

Q. I just want you to think back now, and not remember what the Miranda

Rights are, not remember the card, tell me now what you recall Walker telling them that night?

A. I have to answer the same, after he placed the two of them under arrest, told them to come over, he told them, you have the right to remain silent, anything you say can be used against you in a court of law.

Q. Do you remember anything else that he told them?

A. Just that, he read them their rights and he asked the question again about what was aboard the boat?

Q. Okay, had there been a dialogue between you and Walker and the Defendant Garcia at the time you stopped the vessel and Garcia was answering your questions and Walker's questions from time to time? Do you recall that?

A. I recall asking him if I could check his box, I don't know what you're looking for, I really don't.

Q. I just want to know if there was a series of questions between you to Garcia and Walker to Garcia in which he responded to your questions?

A. Yes, after they told me there was marijuana on board, I was scared and I remember he said come on to the side and

read them their rights and then he asked them to help me with the catch box and they went and lifted it all by themselves.

Q. I just want to know, prior to the time of Garcia making the statement, 'there's marijuana on board', if there hadn't been a series of questions and answers between the officers and Garcia, yes or no?

A. I don't recall anything other than what I already told you.

Q. You don't remember any questions which came before that statement?

A. Yes, mine asking if I could check the catch box.

Q. Okay, do you recall any other questions?

A. No.

Q. Do you recall questions about where he had been, where he was going, who was the owner of the boat, where were the

papers on the boat, do you recall those questions and answers?

A. Some of them which we have already gone over.

Q. I'm asking you just a simple yes or no, I'm trying to job your memory that indeed there was questions between the officers to Defendant Garcia before the statement about the grass?

A. I can't remember anything in particular other than trying to see his box, that's all, the catch box, what seafood he had on board, this is what was in my mind.

Q. Did Officer Walker say anything to you at the specific time that you all spotted the lights of the vessel and told you to put your spotlight on the stern, was there any conversation whatsoever concerning that vessel between you and Officer Walker?

A. Sure, he said, 'let's go check the boat'.

Q. What else did he say?

A. He mentioned of course that they were sitting still in the water which he had a lot better eye than I did then, he was trying to teach me, you know.

Q. I just want to know hwat he said.

A. 'When we get close to the boat, I'm going to tell you when to turn the spotlight on, hold the spotlight and when I tell you to turn the spotlight on, turn the spotlight on.'

Q. Did he tell you any suspicion that he may or may not have had concerning this vessel prior to the time your reaching the vessel?

A. No, I had no idea we were even looking at a smuggling boat, I'll tell you that truthfully, before I went on board that boat, I had no idea, I didn't even think of grass.

Q. During the time that you were walking all aboard the boat until the time that you looked in the forward hole, you didn't actually see any marijuana on that boat, did you?

A. No, sir, I didn't

Q. You didn't smell any marijuana?

A. No, honestly, I did not.

Q. Now, there was a statement when you and Garcia when you said you wanted to look in the forward hole, correct, asked permission?

A. Yes, I said I'd like to see the forward hole, or the catchbox.

Q. And he didn't give you permission, right? He wanted to know whether you had a search warrant?

A. He asked if I had a search warrant and I said, 'no sir, I don't, but I'd like to check your forward box'.

Q. Did Officer Walker then make any comment concerning the need or lack of need of a search warrant to Garcia?

A. I think he might have said, 'no, we don't have one', I don't remember him saying that, I remember, I said, 'no, I don't have one, I'd like to check your forward box'. Then he put them under arrest.

Q. What did he put them under arrest for?

A. At that point?

Q. Yes?

A. For registration, that I recall.

Q. So the, that occurred after the conversation concerning the need or whether a search warrant existed or not, right?

A. Yes, after Garcia asked me if I had a search warrant.

Q. What happened then after he placed him under arrest for no registration?

A. He called the two men over to the side of the boat and read them their rights, wait a minute, Garcia made a statement that there was no use going any further, at this point he said, 'there's grass aboard', that was the first statement.

Q. No use going any further, there's grass on board?

A. Right, there's no use in you going any further.

Q. What was the next thing that happened?

A. He brought them over to the side of the boat.

Q. The two of them?

A. Yes.

Q. Okay, what happened then?

A. He read them the Miranda Rights.

Q. Okay, did he tell either one of them that they were under arrest then?

A. Oh yeah, he told them both, 'you are both under arrest'.

Q. For what?

A. I don't recall exactly whether he said for grass or what.

Q. And then he read them their Miranda Rights, correct?

A. Yes.

Q. At that point you still hadn't observed any marijuana, right?

A. No, I hadn't observed any.

Q. And you hadn't smelled any marijuana?

A. No, sir.

Q. And Walker was still aboard his vessel, he hadn't come aboard the San Rafael, right?

A. Right, he hadn't.

Q. So he placed him under arrest for possession of marijuana based on Garcia's statement, I guess, right, because you

hadn't seen or observed or smelled any, right?

A. No, because they didn't open the hole until after he read them their rights, they stated again that there was marijuana aboard, then he checked it.

Q. Okay, but at this point nobody had been in the hole, right?

A. No, sir, we were going on what the guy said.

Q. Did he say how much marijuana was aboard the boat?

A. No, sir, he didn't.

Q. He just said, 'there's no use going any further, there's grass aboard the boat,', he didn't tell you whether it was one gram, ten grams, one hundred pounds, one hundred thousand pounds, or any amount?

A. I had no idea what was aboard the boat.

Q. You had no idea of the weight of the amount?

A. No.

Q. So, they were placed under arrest at that point?

A. Yes.

Q. Okay, so what happened next?

A. After Garcia said, 'there's marijuana' for the second time, Officer Walker asked, 'will you help this officer ascertain that fact', I forgot the exact wording he said.

Q. Verify that fact?

A. Right.

Q. So then Officer Walker asked him to perform a certain function to assist you, right?

A. Yes.

Q. Okay, now prior to that time, the second statement when he said, 'there's marijuana on board', he didn't say how much?

A. No.

Q. So then Officer Walker asked him to help you, right?

A. Yes.

Q. What happens then?

A. Casal and Carcia went to either side of the box, lifted the lid, there was a white freezer box top, this is a typical freezer and as I held the lid up after they had lifted it, it was stuffed to the gills.

Q. It was stuffed to the gills with what, tell me exactly what you observed.

A. An overpowering odor of cannabis sativa, marijuana, it looked like big bales of grass.

Q. Could you see a vegetable substance?

A. There was little particles of it.

Q. That you could see?

A. Yes.

Q. Did you have a search light?

A. No, but the boat was illuminated from Officer Walker's spotlight.

Q. And from Officer Walker's spotlight you could see down that hole to see leafy vegetables?

A. No, this was packed right to the top and there was little stuff laying around, right under that white.

Q. At that point and time had you observed the smell of marijuana before?

A. Yes, sir, I had.

Q. At that time, how many times had you observed it?

A. Since 1969, I've smelled grass all over the campuses of the United States.

Q. Well, that's burning, when somebody is smoking it, right?

A. Yeah.

Q. Was this being smoked?

A. No, it was not, I have also seen it in its package form, I mean I've seen it

before, I use to work in the security department of the University of Miami, we use to see a lot of grass, I know what it smells like.

MR. JAMES: I have no further questions.

THE COURT: Any redirect?

MR. FOWLER: No sir.

THEREUPON; JOSEPH A. VALDES was called as a witness and after being duly sworn, testified as follows.

DIRECT-EXAMINATION

BY MR. FOWLER:

Q. Will you state your name and occupation, please?

A. Joseph A. Valdes, Jr., Detective Lieutenant with the Monroe County Sheriff Department.

Q. And were you so employed on the 18th of September of last year?

A. Yes, sir.

Q. Did you have occasion on that date to speak with either Mr. Garcia or Mr. Casal?

A. Yes.

Q. And where ws that, sir?

A. It was at the Coast Guard Station, Key West, Florida.

Q. And, did you at that time speak to these individuals?

A. Yes, sir.

Q. Before speaking to them did you have any preliminary conversations with them?

A. Yes, I did.

Q. What did those conversations entail?

A. When Garcia and Casal were brought in by the Marine Patrol Agents, Walker and Soli, and they were taken off the boats, at that time I advised the subjects of their constitutional rights, I determined that

one subject could speak and understand the English language which was Garcia and that Casal did not understand English, so I advised Casal of his constitutional rights in Spanish and he indicated to me that he understood, and I advised the other subject of his constitutional rights in English which he advised me he understood, this subject also understood Spanish.

Q. What rights did you adivse Mr. Casal in Spanish?

A. He had the right to remain silent; anything he said could be used against him in a court of law; that he had the right to have his attorney present with him before we questioned him; that if he couldn't afford an attorney the State would appoint one on his behalf to represent him; that he had the right to have an attorney with him before I asked him or he answered any questions.

Q. As to Mr. Garcia, how did you advise him of his rights?

A. The same Miranda warning.

Q. Did you read them or give them to him?

A. No, verbally.

Q. And did either one of the two individuals make any statements to you after that?

A. Yes.

Q. And what were they?

A. Casal in the presence of Garcia, in response to my questions stated to me that he had knowledge that there was marijuana on board the San Rafael when it was loaded and also stated to me that it was loaded in the area of the Bahama Banks.

Q. Did Mr. Garcia say anything in response?

A. He said he didn't want to make any statements, that he wanted to talk to his

lawyers and I didn't attempt to question him any further.

MR. FOWLER: No further questions.

THEREUPON:

CROSS-EXAMINATION

BY MR. JAMES:

Q. Did they execute a written waiver of rights?

A. No, sir.

Q. And who else was present besides you and them that spoke Spanish?

A. No one.

Q. And they never signed a written waiver of rights?

A. No, sir.

MR. JAMES: Thank you, that's all I wanted to know.

THE COURT: Any redirect?

MR. FOWLER: No, sir. The State has no further witnesses.

MR. JAMES: Sir, I know that you've had almost very similar factual situation, somewhat I guess in the Miranda case when we talk about stopping a vessel which is under lawful operation, I'm not going to rehash the case law with the Court, I know the Court's ruling in that case but I think that when a vessel is going down in lawful operation, that there is some need to do more than, there should be some more information in order to stop a vessel because of mobility factor under the Carroll doctrine you could probably stop an automobile without a search warrant when you need one in other circumstances, but in this case the vessel had lost its mobility factor, it was there, and I don't think the State of Florida underneath the guise of a statute and underneath the state they give our Florida Marine Patrol an apparent blanket authority to violate the Fourth

Amendment, and I know that underneath the statute it says they are allowed to stop to perform safety checks and perform documentation checks and what else. I think that statute itself belies in the face of the Fourth Amendment and would urge this Court to declare it unconstitutional, the authority given the Marine Patrol under the guise of this statute.

THE COURT: I don't think you made your motion based on the constitutionality of the statute.

MR. JAMES: No, I'm not but at this point I'm alleging it as one of the grounds by which my motion...

THE COURT: You didn't start out on your motions stating those grounds, I don't think.

MR. JAMES: I know that, but I would like a ruling.

THE COURT: I'm not going to rule on constitutionality that has not been presented to the Court on those grounds.

MR. JAMES: Well, I think without that statute they have no justification and that is the only justification, that statute for stopping a vessel that in the opinion of the officers was completely lawfully and legally operated and they had no reason, both officers, whatsoever to stop this vessel, so what gives them the right to stop this vessel, certainly no the Fourth Amendment, then they can't fly and if they are not going to be able to use that statute, that the State can't, the State has to rely on that statute for justification to stopping this vessel, if not, we've got a tremendously, completely from its inception, illegal search and seizure because there was no reason to suspect this vessel whatsoever of anything, there was no

probable cause to stop the vessel. Probable cause arose, if at all, subsequent to the stopping of the vessel, the initial stopping is invalid as in a car search, then the stopping of this vessel is invalid, the only thing that the State can rely on is the statute that seems to give the right to a Marine Patrol to stop any vessel anywhere in Florida waters without any reason whatsoever, so they have to rely on that statute, and I'm urging the Court that that statute should be held unconstitutional by this Court and no search and seizure should be upheld based on the validity of said statute. I also submit that the probable cause, the marijuana should be suppressed as the fruit of a poisonous tree, of an improper confession relying on Won Son vs. United States, and I say the original confession by Mr. Garcia is completely improper, that he was under

arrest by the testimony of the officrer, that the confession and statements from Mr. Garcia came subsequent to his arrest and prior to his warning of rights. I'm sure the State is going to attempt to rely and say, it was merely a spontaneous declaration. Well, we had dialogue going on for quite some time in questions and answers and questions and answers and it was not, I think a spontaneous declaration is when somebody runs into a police station and says, 'I just shot my neighbor', it was not a result of any custodial interrogation and I don't think that that confession has to come as a result of a specific direct question, but if there's conversation going back and on between the officers and the Defendant and the Defendant in custody and not free to leave, as Officer Walker said, in fact is under arrest, as Officer Walker said, and has not been warned of his rights

and he then makes a statement that can not qualify as a spontaneous declaration and then they said that their finding of the marijuana and their search and seizure was based solely and completely as the result of the statement made by Garcia, that there is no other reason to believe that marijuana was on aoard, they hadn't smelled any, they hadn't observed any and other than some spoiled vegetables and the lack of ice in the icebos in the back, that that is no reason to believe that there was marijuana on board the vessel. I also submit that the original arrest of Mr. Garcia, that there was no probable cause for the lack of registration and second, I submit that the second arrest of Garcia and Casal for possession of marijuana was improper and that the officers had not through any of their senses had not observed any marijuana whatsoever, hadn't

seen any prior to the arrest, hadn't observed any, hadn't smelled any, hadn't detected any, all they had was the bare statement of Garcia at that point that quote, 'that grass was on board', nothing about weight, whether it was a misdemeanor, I submit if it had been less than five grams aboard that boat Garcia's statement would have been completely correct and yet the officers would not have been justified in arresting them, that arrest is improper and invalid and the fruit flowing from the improper arrest, the invalid confession are the fruit of this crime, all of which should be suppressed as fruit of the poisonous tree. I submit that their confession, the first one of Garcia should be suppressed since there was no, and all other confessions flowed as the direct result of this first statement, Thank you.

THE COURT: What says the State?

MR. FOWLER: Your Honor, first of all the State contends under Miranda which has already been cited by Mr. James, Hill v. State, a Federal Second case, the Marine Patrol Officers have the right to board the boat and inspect for a limited number of things, registration being one of them, seafood catch being another. The testimony in the record is that there were wire fishtraps aboard the boat, there was a puller on the boat, when the officer asked permission to inspect the back icebox, that was granted, at that point the story that had been received didn't match the physical surroundings, and when asked to inspect the catch hole further, that being the forward compartment, a warrant was requested. If Mr. Garcia wanted to state to the officers at that time that the boat was loaded with marijuana, which I believe it was Officer Walker's statement as to Garcia's statement

that there was marijuana on board. Mr. James is absolutely correct in his supposition as to what the State's argument would be, it was not in response to any questions, it was not an ellicited response, both officers testified at that time they had no idea there was marijuana on board the boat and the individual wasn't arrest for possession of marijuana at this time, he was under arrest for not having a registration, a Florida Registration Certificate which is required by State Law.

THE COURT: I want to pin it down, is this motion to suppress confession, is it directed to a particular statement, this seems to generalize it.

MR. JAMES: Yes, sir, I think it goes to all confessions and informations.

THE COURT: I don't think everything they said is a confession, you're talking about the statements, really. As I follow there are no written.

MR. JAMES: There are no written statements at all, they are all oral.

THE COURT: Just to clarify the record, I want to ascertain here, now what the statements are or what do you call a confession.

MR. JAMES: I call three separate statements as being a confession. The first one by Mr. Garcia, that said, that there was grass on board; the second statement supposedly by Mr. Garcia to the question, 'what's on board', answer, 'marijuana'; the third statement made by Mr. Casal...

THE COURT: Those are the two statements one going before them being read their rights and one after.

MR. JAMES: Yes, sir. And the third, is the statement by Mr. Casal, as I understand Casal made no statements to Walker, he made one to Valdes.

THE COURT: As I follow it that is the only time he said anything.

MR. JAMES: Right.

THE COURT: Motion to Suppress physical evidence is denied. Motion to Suppress confession is denied.

MR. JAMES: Your Honor, I will then move on the record now, being that we have statements, I move for a severance of the trial, I don't think the statements Mr. Garcia said are admissible in a trial involving Mr. Casal, and I don't think that Mr. Casal's statement to Mr. Valdes are admissible in a trial involving Mr. Garcia. I think we have a Bruton problem. I move for severance.

THE COURT: As I recall the statement of Casal, he didn't say anything as to the other Defendant, the note I have is that he stated that he had knowledge of marijuana being on board, that it was loaded in the Bahama Bank, that's the note I made.

MR. JAMES: I still think it is a violation of Bruton for that statement to come in, I think that's the type statement that no type of excising would make it permissible even though it refers strictly to himself, we've only got two people on board the vessel and I think a joing trial would violate their rights, and I move for severance. I don't think it's permissibly possible to try these two Defendants together in light of the fact that you're going to allow in the statements. It is certainly a hearsay declaration as to the other Defendant, their mere presence does not cure the hearsay.

THE COURT: What says the State?

MR. FOWLER: Your Honor, since the statement by Mr. Casal applies only to Mr. Casal, there is not a hearsay problem as it applies to Mr. Garcia.

MR. JAMES: You may not have a Bruton problem but you still have a hearsay problem, I submit that the statements are not capable of doing anything and no type of instruction to the Jury is going to cause them to consider that statement solely and completely as to the declarent.

THE COURT: I don't see where the statement attributed to Mr. Casal, the Defendant Casal in any way implicates Garcia, as I got it, there's nothing said, we did it or who was present or when the where being only the Bahama Bank. I can't see that, your argument is that the statement of one Defendant implicates the other.

MR. JAMES: Necessarily, I think the statement can implicate the codefendant without necessarily naming him by either name or description, and that's what I'm saying that that type statement does.

THE COURT: I'm just pointing out, I don't think that does that.

MR. JAMES: I submit, it is very naive to believe that a jury is going to consider that statement solely as to the guilt or innocence of Casal and not consider it in any fashion as to Mr. Garcia.

THE COURT: This isn't the case of one laying something on the other.

MR. JAMES: I don't think that that is the only thing that Bruton outlaws.

THE COURT: I'm going to deny the motion to sever.

****

STATE OF FLORIDA)

COUNTY OF MONROE)

I, RoseMary Fernandez do hereby certify that Motion to Suppress evidence and confession in the case of the State of Florida versus Constantino Casal and Omar Garcia was heard on September 20, 1978,

that I was authorized to and did report the proceedings in said hearing, and the foregoing pages numbered 1 through 60 constitute a true and correct transcript of my report of the proceedings in said hearing.

In Witness Whereof, I have set my hand this 16th day of March, 1979.

RoseMary Fernandez, Ct. Reporter

CASE NUMBER 77-853

STATE OF FLORIDA

vs

CONSTANTINO CASAL

OMAR GARCIA

I N D E X

NORMAN LEE

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IN THE CIRCUIT COURT OF THE
SIXTEENTH JUDICIAL CIRCUIT,
IN AND FOR MONROE COUNTY,
FLORIDA. (CRIMINAL DIVISION)

STATE OF FLORIDA	)	
vs	)	CASE NUMBER
CONSTANTINO F. CASAL	)	77-853 CF
OMAR GARCIA	)	
	)	

T E S T I M O N Y

The above entitled case came on for trial before the Honorable Bill G. Chappell, Judge of the Circuit Court, Criminal division, in and for Monroe County, Florida, on September 20, 1978, pursuant to notice.

APPEARANCES:

RICHARD FOWLER, Assistant State Attorney, on behalf of the State.

MANUEL W. JAMES, Attorney-at-law, on behalf of the Defendants.

. . . .

THE COURT: Counsel for the Defendant reserves his opening statement until the Defendant's side of the case. State call your first witness.

MR. FOWLER: Your Honor, the State will call Norman Lee.

THEREUPON, NORMAN LEE, was called as a witness for the State, and after being duly sowrn, testified as follows:

DIRECT EXAMINATION, BY MR. FOWLER:

Q. Mr. Lee, will you state your name and occupation?

A. My name is Norman Thomas Lee, and I am employed by the Monroe County Sheriff Department in Key West, Florida, as a criminalist, I operate the Sheriff Department crime laboratory and I am also property custodian for the Sheriff Department.

Q. In your capacity as porperty [sic]

custodian, have you brought anything with you today concerning this case?

A. Yes, sir, I did.

Q. When and where did you come in possession of it?

A. I received the items that I brought with me today which are behind the court reporter from Lt. Joe Valdes of the Monroe County Sheriff Department on September 19, 1977, at 3:00 P.M. in the afternoon at the laboratory.

Q. Mr. Lee, what items did you receive from Detective Valdes at that time?

A. I received two wrapped, white plastic packages, one clear wrapped large plastic package and also a clear plastic bag containing brown paper bags.

Q. Mr. Lee, I ask you to go and look at those items that you brought with you today and ask you if they are in the same condition as when you received them, if

they are in fact the same items that you received.

A. Yes, sir, they are. (After examining packages) Item 1, Item 2, Item 3 and Item 4.

Q. Who else has had access to these particular items since the day you received them?

A. The other person that has had access to these is assistant property custodian, Peter Montero of the Sheriff Department who works under my immediate supervision, alsc there is a key to the vault that is locked in the accounting office at the Sheriff Department in a sealed package for emergency purposes.

Q. Has Mr. Montero ever had access to these particualr [sic] items outside of your supervision?

A. No, sir, he has not.

MR. FOWLER: Your Honor, I'd like to

have these marked as Composite State Exhibit A, B, C and D.

THE COURT: All right.

MR. FOWLER: Thank you Mr. Lee, I have no further questions of Mr. Lee at this time.

MR. JAMES: I have no questions of Mr. Lee at this time.

THE COURT: All right, the witness may step down.

MR. FOWLER: The State will call Jenna Solly.

THEREUPON, JENNA SOLLY, was called as a witness for the State and after being duly sworn, testified as follows:

DIRECT EXAMINATION, BY MR. FOWLER:

Q. Will you state your name and occupation for the record, please?

A. Jenna Solly Sprecher, Florida Marine Patrol Officer.

Q. And how long have you been with

the Florida Marine Patrol?

A. Approximately 1 1/2 years.

Q. During that period of time were you know [sic] by any other name.

A. Yes, Jenna Garland Sprecher Solly.

Q. Were you employed by the Marine Patrol on 18th of September of last year?

A. Yes, I was.

Q. Did you have occasion to be on patrol on the early morning hours of that day?

A. Yes, I did.

Q. Do you recall having come across a boat in the early morning hours of that day?

A. Yes, I do.

Q. Will you describe please to the ladies and gentlemen of the Jury exactly what you did upon seeing the boat?

A. At the time that we saw the boat Officer Walker and I, the boat was

stationary in the water and we decided that we would just routinely check it, we pulled up behind the boat and put a spotlight on the boat and came alongside and identified ourselves as Florida Marine Patrol Officers.

Q. How were you dressed?

A. In full uniform.

Q. What happened then?

A. We asked the gentlemen. . .

MR. JAMES: I have to object to 'what we did', I think I need to know what she did, what someone else did, I object to the use of the word 'we'.

THE COURT: Objection is sustained.

Q. Officer, who was with you at this particular time?

A. Officer Mark Walker, Florida Marine Patrol.

Q. Where was he located with respect to your person?

A. We were both together in the patrol boat, he was driving the boat and I was a passenger.

Q. Now, what did you do at that time, at the time you spotted the boat?

A. I put the spotlight on the boat, it was a large white boat with blue trim, obviously a fishing boat, it had wire fish traps all over it and a trap puller on the front, and as I said, we pulled alongside, identified ourselves as Florida Marine Patrol.

MR. JAMES: Objection to the use of the word 'we'.

THE COURT: Objection is overruled, she has identified who 'we' is. Go ahead.

MR. JAMES: Your Honor, the purpose of my obejction [sic] is sir, on hearsay she is going to say, 'we did something' when Walker did it.

THE COURT: There has been no hearsay at this point, your objection is overruled. Go ahead.

Q. What did you do?

A. I believe it was Officer Walker that said. . .

MR. JAMES: Objection as to what Officer Walker said.

Q. What did you do at that point?

A. I wasn't doing too much, Officer Walker was speaking, he is the senior officer on the boat and I was learning.

Q. Okay, tell us what happened during the course of events?

A. I have to speak what Officer Walker did, Officer Walker identified us as Marine Patrol.

MR. JAMES: Objection, it is a hearsay answer as to what Officer Walker said.

Q. Rather than tell us what Officer Walker said, you may tell us what Officer

did, what you witnessed him do or what you did or what you said?

A. I observed two men step out of the wheel house of the boat, one of them was a young man, one of them was an older man, slightly taller and we asked them, I didn't ask them, Officer Walker asked them.

MR. JAMES: Objection as to what Officer Walker asked.

THE COURT: Objection sustained.

Q. Were certain requests made of these two individuals?

A. Yes, sir, there were.

Q. Were those requests complied with?

A. Yes.

Q. Were they complied with to your satisfaction?

A. No.

Q. What did you do as a result of that?

A. I observed the man go back into the wheelhouse after he was requested to get registration papers for the boat.

MR. JAMES: Objection as to, move to strike the words, 'after they were requested', the answer based on hearsay on something was told.

THE COURT: Counsel approach the Bench.

Thereupon, Counsel for the State and the Defendant approached the Bench.

THE COURT: The whole thing about it is you haven't laid a predicate, he's making these objections, basically they are hearsay, some of them I don't know, I've never heard about hearsay as to, we are just going to be bogged down here if you don't get this thing on the right foot, that is why I called you up.

MR. FOWLER: I'm not sure what, obviously I'm having difficulty with this

witness.

MR. JAMES: Ask her what did you do.

MR. FOWLER: I've asked her that.

THE COURT: Well. . .

MR. FOWLER: I guess I'll keep trying.

Q. Officer Solly, after your initial request was not complied with, what happened?

A. I can tell you what happened in my own words, I mean, it's the best that I can do.

Q. Tell us what happened?

MR. JAMES: Objection to the narrative, Your Honor, I can't, it is possibly going to be a hearsay, I think the witness should be instructed.

THE COURT: The Court will instruct the witness, at this stage anyway, do not quote what somebody else other than yourself said.

A. I understand, Your Honor.

THE COURT: I'll allow you to go ahead.

A. The problem is I can't tell you what happened because I didn't speak most of this time, is it permissible for me to say that.

THE COURT: Mr. Fowler, maybe you better ask specific questions.

Q. Officer Solly, did you make a request of the individual, did someone on your boat make a request of the individuals on board the boat you were on?

A. Yes, my partner requested that...

Q. Okay, was that request complied with to your satisfaction?

A. Yes, Mr. Garcia or the younger man on the boat brought out an envelope of papers, I observed these papers, the request was for Florida registration papers and these could not be produced.

Q. What did you do?

A. A request was made to go aboard the boat, the gentlemen accepted this and helped me aboard the boat.

Q. What did you do once you got on board the boat?

A. Myself and the two gentlemen went into the cabin of the boat, we proceeded into the cabin of the boat, mattresses were askew, I was looking in the boat on a routine check for safety equipment, maybe to help him produce the papers, the Florida registration papers which we needed which were not produced up to this point.

Q. Did you at this time request of them the registration papers?

A. Yes, I said we needed to see the Florida registration papers, I needed to see the Florida registration papers.

Q. What did you do then?

A. I then asked them if there was any

seafood products on board.

Q. What was their answer?

A. The younger man answered my by saying, 'no, we're going now to Cay Sal Banks to fish and we have just been at Woodsy Niles for a day icing up, I assume he was icing up, whatever they were doing there, they were just going out to fish, I said, "I still would like to check your catch box".

Q. Did you subsequently do that?

A. Yes, sir, there was one small box in the back, in the stern of the boat, we proceeded towards that.

Q. Describe that box for us, please?

A. This box was approximately the size of the witness seat here, it had a wooden lid on it.

Q. Did you request permission?

A. Yes, I requested permission of the younger man if I could check this

box, he said, yes, I could, I lifted the lid.

Q. What did you find in there?

A. There was some rotten food in there, no ice whatsoever, which at this point seemed a little strange to me because they said...

MR. JAMES: Objection as to any conclusion or opinion of the witness.

THE COURT: Objection sustained.

A. I saw some rotten food there, no ice, and there was no seafood for me to check so I closed the lid and we proceeded to the front of the boat, I requested to check the front catch box at which point Mr. Garcia or the younger man said that he'd like to see a search warrant, he asked me if I had a search warrant and I said, "no, sir, I don't have a search warrant but I'd like to check your front catch box".

Q. What happened then?

A. He refused, at this point he kept asking me if I had a search warrant, I said, "No, sir, I would like to check the front catch box". Officer Walker upon hearing this request, I assume he heard the request, said, "You're under arrest...

MR. JAMES: I object to anything Officer Walker said.

THE COURT: Sustained.

MR. FOWLER: What did Officer Walker do?

A. I don't know how to word it.

Q. I withdraw the question. The individual you indicated as being the younger man on the boat that evening, do you see him located anywhere in this courtroom here today?

A. He looks slightly different, he's grown a moustache since I last saw him,

it appears to be Mr. Garcia, the man in the rust collored shirt.

MR. JAMES: I'll stipulate that she has identified Mr. Garcia.

Q. Do you see the other individual that was on the boat that evening located anywhere in this courtroom today?

A. It looks like Mr. Casal in the blue shirt as I remember seeing him.

Q. Will you indicate where he is seated in the courtroom?

A. Right next to Mr. Garcia, he looks pretty much like the man I saw.

Q. Well, does he look like the man you saw or is he the man you saw?

A. That looks like the man I saw that night with Mr. Garcia.

MR. FOWLER: Let the record reflect the witness has identified the Defendant Casal.

Q. After Mr. Garcia requested a

search warrant, what happened then?

A. Officer Walker placed the two men under arrest.

Q. And then what happened?

A. I myself had moved slightly away from them towards the front of the catch box, towards where the catch box was located in the front of the boat and after Officer Walker placed the men under arrest, I believe he placed the younger men under arrest for not having the correct papers on board the boat, the young man said....

MR. JAMES: Objection as to anything the young man said, there has been no proper predicate.

MR. FOWLER: I'll stipulate to Mr. James [sic] objection. Tell us what you all did not what he said. What did you do next?

A. I stood by the box, the next

reason that they were put under arrest is for what they said.

Q. Just what you did next in the course of being on the boat?

A. I watched Officer Walker call the two men over to him and read them their Miranda rights.

Q. Okay, then what happened? What physically transpired on the boat?

A. Mr. Garcia said there is marijuana on board.

MR. JAMES: Objection as to anything Mr. Garcia said.

Q. Just tell us what you did, what physically happened on the boat?

A. The two gentlemen went over to the catch box and lifted the blue lid up and then I held the blue lid like this as they lifted the white lid off the catch box...

Q. What if anything did you notice?

A. A very strong odor of Cannabis Sativa which is Marijuana, I saw big bales of Marijuana laying underneath the white catch box.

Q. Then what happened?

A. I verified to Officer Walker that what I believed to be Marijuana was definitely, the boat was loaded with it to the gills and that there is no question that that was what was aboard the boat.

Q. Will you describe how this Marijuana was packed inside the hold, what you suspected to be Marijuana was packed inside the boat?

A. They were large bale like packages, looked like a bale of hay, some of them were wrapped in plastic, some were wrapped in burlap and they were taped up, they were packed side by side, some of them were diagonal, they were packed as

tight as they could be, right from the top of the refrigerator box.

Q. Okay, then what did you do?

A. We replaced the two lids, Officer Walker was still in his patrol boat by the side of the boat and I placed Mr. Casal into the patrol boat with Officer Walker, Mr. Garcia was to take the boat back and I stayed with Mr. Garcia on board the boat with the Marijuana.

Q. What was the name of that boat?

A. The San Rafael, it was written in blue on the boat.

Q. You say that you were to stay on board the boat, what happened then?

A. Our station had been notified and we were told to escort the boat back.

MR. JAMES: Objection as to what they were told.

Q. What did you do?

A. We escorted the boat back to Key

West, I was with Mr. Garcia in the wheelhouse, keeping him under observation, Officer Walker had Mr. Casal in his boat, other officers came to the scene.

Q. Did you ever get off that boat on the way back?

A. At one point I did.

Q. Did anyone replace you?

A. Yes, Officer Eddie Melvin was put aboard my boat, the Marijuana boat that we were in.

MR. JAMES: Objection as to the use of the word Marijuana.

THE COURT: Sustained.

A. The large fishing boat that I was on with Mr. Garcia, Eddie Melvin took my place, I was temporary placed on board the patrol boat with Mr. Casal, the elderly man and Officer Walker, and then we transferred back as Officer Melvin was needed back in Key West faster than

the big boat was going to get there.

Q. So, then you again got back on the boat.

Q. It was less than four or five minutes that I was off the San Rafael and there was another officer on board with Garcia on the boat at the time.

Q. When did you next leave the San Rafael?

Q. After we reached the Coast Guard Station in Key West I stepped off the San Rafael at the dock.

Q. Officer, I ask you to step off the stand and observe A, B, C, D, for Identification and ask if you can identify them?

A. Yes, I can definitely identify this one, these are all the samples that myself and Sergeant Papp of the Monroe County Sheriff Department took from every ten bales.

Q. You took the samples yourself, is that correct?

A. I held the brown bags open for Sergeant Papp to scoop out the samples of Marijuana.

MR. JAMES: Objection to the use of Marijuana.

A. The samples of suspected Marijuana.

Q. I ask you now to inspect them to see if they are in the same condition they were in when you last saw them?

A. They appear to be, the numbers that I put on the left hand corner, this is my writing, this is my writing on which appears to be the same brown bag.

Q. As to State Exhibit B, C, and D for Identification, can you identify them?

A. Yes, these are all the same, the date and the time my signature and my identification number, these are the

same ones that I turned over to Lt. Valdes.

Q. Where did you come into possession of those particular bales?

A. Aboard the San Rafael.

Q. And where did you take the samples that are in the plastic bag?

A. Aboard the San Rafael, as each one one [sic] of the bales that we were going to ake [sic] a sample out of came out of the hold, we took the samples right there.

MR. FOWLER: Thank you, no further questions.

THE COURT: Cross-examination?

MR. JAMES: Your Honor, before my cross-examination, I would like to make a motion at the side bar.

Thereupon, Counsel for the State and the Defendant approached the Bench.

MR. JAMES: I move to strike any

reference whatsoever where she used the word marijuana, I move to strike when she related as to what Garcia said and to instruct the Jury to disregard anything she said as to what Garcia said. I further move to strike the testimony of Garcia, quote, 'he refused to allow inspection of the hold.' That's my motion to strike.

THE COURT: On what grounds?

MR. JAMES: My motion to strike as to what Garcia said, thus far in this record there's no proper predicate and foundation as to allow anything that Garcia said.

THE COURT: The Court didn't rule on ...

MR. JAMES: I've got to move to strike, I'm objecting, that's all that I can do is to move to strike, you should have told him.

the court: I mean, the last one, I didn't rule on, I don't know what they did.

I objected, she kept saying and you didn't rule so I've got to move to strike.

THE COURT: Well, I want to be specific because some of them I agree with, I mean I'm not going to grant you to strike on everything where marijuana was used because just there at the end she said suspected marijuana.

MR. JAMES: Okay, I want every time she said marijuana without the use of the word suspect in front of it, I think I'm entitled to the motion to strike as to what Garcia supposedly said, when I objected she kept talking as to what he said.

MR. FOWLER: At which point?

MR. JAMES: About there being mari-

juana aboard the boat.

THE COURT: At that time she had already identified the Defendant as being there.

MR. JAMES: The record is still devoid of proper predicate of foundation of that statement coming in regardless that she identified him, the record must have a proper predicate, I also want to move to strike the testimony as to him refusing to allow inspection on the basis that any statement would prejudice the Jury, that he exercised his Constitutional Rights and I think that would prejudice the Jury, the fact that he didn't wouldn't allow them to search, so I'm moving to strike on that basis.

THE COURT: What says the State?

MR. FOWLER: Your Honor, as to his testimony, I can see his point as to the other, as to the last statement, that

should be admissible, he gave his consent.

THE COURT: He gave his consent, where?

MR. FOWLER: He gave his consent to look in the boat.

THE COURT: You're talking about the back fish box?

MR. FOWLER: Yes, sir.

THE COURT: Maybe I didn't hear it, I thought he consented for her to look in that particular box.

MR. JAMES: That is what I recall, a specific box.

MR. FOWLER: My recollection is, he gave consent.

THE COURT: I will grant your motion to strike the use of the word marijuana at the time it wasn't conditional where the word suspected was added, I don't know how many times that happened, this

takes care of your motion, as to the statement, I'm having trouble pinning it down exactly what the statement was, you're talking about the reference to the search warrant?

MR. JAMES: No, I'm talking about reference that there was marijuana on board.

THE COURT: I didn't hear it.

MR. JAMES: I was objecting and she kept talking about it.

THE COURT: I didn't even hear it, what was it that she heard.

MR. JAMES: Reference to Garcia saying there was marijuana aboard the vessel.

THE COURT: Are you arguing against that?

MR. FOWLER: Your Honor, I'm not arguing, it was not in response to a question, it was a spontaneous statement by the Defendant.

THE COURT: When did she say that, right after she said about the search warrant?

MR. JAMES: Yes.

THE COURT: Is that when it was?

MR. JAMES: Yes.

THE COURT: You want to respond to his argument?

MR. JAMES: No, I think there have been questions but I think they have to show the proper foundation, it hasn't been lay layed, it doesn't show a spontaneous declaration, this record doesn't show it as such, the record shows there was some question between the officer and the Defendant, they can't do that without a proper predicate.

THE COURT: What predicate are you talking about, their rights?

MR. JAMES: Yes.

THE COURT: As I recall, you correct

me if you remember differently, she started to say, "I'd like to look in the front fishbox, is that right?

MR. JAMES: I'm not contesting that.

THE COURT: And he said, 'do you have a search warrant.

MR. JAMES: That's correct.

THE COURT: As I said, I didn't hear that part, the other part of that statement that you moved to strike, was it right there?

MR. FOWLER: Yes.

THE COURT: That doesn't make sense to say, do you have a search warrant.

MR. JAMES: And she went on, she said she didn't but she still wanted to look at the fishbox.

THE COURT: I hadn't heard that.

MR. JAMES: And then she said it again and in response to that supposedly he answered about the grass, in response

to that request, in response to that question, it was the result of that question, in response to a specific question and request to look in the front fishbox.

THE COURT: Motion denied.

MR. JAMES: Okay, I also Your Honor, specifically when she was testifying he refused to allow inspection, I move to strike that testimony in reference to exercising his Constitutional Rights.

THE COURT: State wants to respond?

MR. FOWLER: Your Honor, I think it's not a question of exercising his Constitutional Rights, it is a question of having withdrawn consent previously made.

THE COURT: You're moving to strike her statement?

MR. JAMES: Yes, sir.

THE COURT: Is that what you want a jury instruction on?

MR. JAMES: Yes, sir, I sure do. Your Honor, the Third District Court of Appeal.

THE COURT: I know what you're talking about.

MR. JAMES: They say I've got to move to strike if you deny that or if you grant it, either way, I then move for a mistrial, they say I have to go through this procedure, I don't know what else but to follow what they say in the case, regardless whether I agree with it or not.

THE COURT: I'm going to deny it.

MR. JAMES: Okay, I now move for a mistrial based on the fact that the Jury has been prejudiced because of all the statements coming in, statement allegedly made by one of the Defendants as to exercise the Constitutional Right of one Defendant.

THE COURT: The State wish to...

MR. FOWLER: No, sir.

THE COURT: Motion for a mistrial is denied.

MR. JAMES: Your Honor, one second.

THE COURT: All right.

MR. JAMES: We have no questions at this time.

THE COURT: The witness may step down, State call your next witness.

MR. FOWLER: The State will call Mark Walker.

THEREUPON, MARK WALKER was called as a witness for the State and after being duly sowrn, testified sas [sic] follows:

DIRECT EXAMINATION BY MR. FOWLER:

Q. Will you state your name and occupation, please?

A. Mark Walker, I am employed by the Florida Marine Patrol.

Q. How long have you been so employed?

A. Approximately 8 years.

Q. Were you employed by the Florida Marine Patrol on the 18th of September of last year?

A. Yes, sir, I was.

Q. Did you have occasion to be on patrol in the early morning hours of that day?

A. Yes, sir.

Q. Anything unusual occurred in the early morning hours of that day?

A. Yes, sir, Officer Solly and I were on routine water patrol in the area from where we had gone out to Munson Island and were returning back towards Key West, this was on the night of the 17th which ran into the early morning hours of the 18th.

Q. Did you have occasion to come across a boat during your patrol in the early morning hours of that day?

A. Yes, sir.

Q. What was the name of that boat?

A. The name of that boat was the San Rafael.

Q. Will you tell the ladies and gentlemen of the Jury and the Court please, what you did upon approaching this particular boat?

A. Officer Solly and I were heading back towards Key West on the ocean side of the keys in Monroe County, we were off Sugar Loaf, we observed a boat which appeared to be sitting in the water, not moving, we stopped and we watched it for a few minutes, the boat appeared to get underway again, we went down a little ways past the boat and turned and come up from behind the boat, as we approached the boat, approximately 50 feet or so, I asked Officer Solly if she would turn the spotlight on to illuminate the boat,

when she turned the light on you could see the name of the boat, the San Rafael, it was a large commercial type boat with the wheel house [sic] on the back, it had a large number of fish traps on the forward deck, crawfish traps pulley mounted on the side of the boat or a trap-puller on the side of the boat. I came along side [sic] of the boat, I identified myself as a Marine Patrol Officer, I asked the Captain if he would stop his boat, we would like to check his papers.

Q. What happened then?

A. The Captain stopped the boat, I went around the bow of the boat, came up alongside of the boat, the Captain and the Mate, the two gentlemen that were in the boat come out to the side, I asked the Captain, I just stated, "Captain, I'd like to check your registration

papers, please".

Q. Did he produce such registration papers for you?

A. No, sir, he didn't.

Q. Is that the only request you made?

A. At that time that was the only request that I had made, I asked for the registration papers, and he showed me a tax receipt, a paid receipt for taxes and later he produced a document, documentation papers for the boat.

Q. Upon his failing to produce Florida registration for the boat, what if anything did you or anyone in your company do that you witnessed.

A. Due to the weather conditions out there which was a little rough for us to be alongside a large commercial boat with the patrol boat, Officer Solly asked to go aboard the boat to further check for the registration, permission

was asked from the captain to come aboard the boat, at which time the mate and Mr. Garcia was identified to us as he was the Captain, assisted her aboard the boat.

Q. What happened then that you observed?

A. Officer Solly went into the wheelhouse and cabin part of the boat, in a few minutes she appeared on the stern or the after part of the boat to the rear door of the wheelhouse along with Mr. Garcia, Officer Solly opened a wooden box approximately 3 ft. long, 1 1/2 ft. wide, she raised the lid on this, looked inside of it, she told me that...

MR. JAMES: Objection to what she told him.

THE COURT: Sustained.

Q. Rather than what she told you,

what happened then?

A. She went back into the wheelhouse part of the boat, she appeared out on the forward part, in front of the wheelhouse in the forward part of the boat.

Q. What happened then?

A. Conversation between Officer Solly and Mr. Garcia.

Q. And then?

A. And Mr. Garcia asked if we had a search warrant at which time I replied that we did not have a search warrant, that we did not need a search warrant, that we were not searching the boat, that he was under arrest for failure to carry his registration.

Q. And what did you do then? What happened next?

A. Mr. Garcia said that there was no...

MR. JAMES: Objection to anything

that Mr. Garcia said on behalf of Mr. Casal as being a hearsay objection, objection on behalf of both Defendants as to improper predicate and foundation thus far to permit any statement made at this time by Mr. Garcia.

THE COURT: What says the State?

MR. FOWLER: Your Honor, as to Mr. James's hearsay objection, both individuals were there and the statement applies only to the individual who made it therefore the other individual would lack, certainly to object since the statement does not apply to him.

THE COURT: That objection is overruled.

MR. JAMES: There is improper foundation and predicate in this record to admit any statement made at this point and time.

THE COURT: Objection sustained.

Q. Did you attempt in any way at that point to illicit any response from Mr. Garcia after you informed him that he was under arrest?

A. No, sir.

Q. What if anything did Mr. Garcia say?

MR. JAMES: Objection. I'd like to voir dire with this witness briefly before we get into that, as to the attempted predicate, foundation layed [sic] by the State.

THE COURT: Go ahead.

BY MR. JAMES:

Q. Was not the, you weren't questioning the Defendant at any time, wasn't the conversation taking place between Agent Solly and the Defendant Garcia?

A. I didn't say what all their conversation...

Q. I didn't ask you that, I'm asking you, isn't it true that Officer Solly and Defendant Garcia were up in a large commercial vessel which you were some feet away, at the time this statement was allegedly made, correct?

A. Yes, sir, I was a few feet off the side of the boat.

Q. And were they not conversations, I'm not worried about what they were saying but at that time when you overheard the statement, right?

A. Yes, sir.

Q. And at the time the statement was made and just prior to that time, were there not conversations going on between Agent Solly and Defendant Garcia?

A. Yes, sir.

Q. And didn't you just overhear the statement that Defendant Garcia was making allegedly to Agent Solly at that

time?

A. I don't know whether Mr. Garcia was replying to me or to Officer Solly.

Q. That statement was made in reply to perhaps to the statement that you had made, correct?

A. I don't quite follow you, Mr. James.

Q. It was made perhaps in reply to statements you made or perhaps in response to questions that Agent Solly had made, is that not correct?

A. Yes, sir.

Q. At the time that you overheard the statement, was the motor running on the big boat?

A. Yes, sir.

Q. Was the motor running on your boat?

A. Yes, sir.

Q. Were you standing in the middle

of your boat?

A. No, sir.

Q. You were just holding on to the side?

A. No, sir.

Q. Then what were you doing?

A. I was laying along side [sic] on the leeward side of their boat.

Q. And you were just drifting along in the rough waters calmly?

A. I wouldn't say I was drifting along calmly, the big boat made, where it was as big as what it was compared to my boat, made more of a shelter for my boat, I was on the lee side where the water was not quite as rough as it would have been on the other side of the boat.

MR. JAMES: That is the end of my voir dire with this witness as to the foundation attempted to be layed [sic] by the State. I renew my objection to any

statement.

THE COURT: Objection sustained.

BY MR. FOWLER:

Q. Officer Walker, what did you do next? After you placed Mr. Garcia under arrest, what did you do next?

A. I maneuvered my boat, then I put my boat close along by Mr. Garcia's boat, I asked Mr. Garcia and the mate, both gentlemen to come over to the side of the boat.

Q. Then what did you do?

A. I advised them of their rights.

Q. And what rights did you advise them of?

A. Of the Miranda rights.

Q. And how did you do that?

A. From the card that I have in my billfold.

Q. Do you have the card with you?

A. Yes, sir, I do.

Q. Will you indicate to the Court please and the ladies and gentlemen of the Jury how you advised the individuals of their rights that evening?

A. Yes, sir, with my boat laying along side [sic] of theirs, my hand on the fender of the boat to keep the boats apart, Mr. Casal, I believe was the mate holding the windshield apart of my boat with the spotlight laying on the dash of my boat which is like a small desk, I brought out my Miranda card, I advised them they had the right to remain silent; anything you say can and will be used against you in a court of law; you have the right to talk to a lawyer and have him present while you're being questioned; if you cannot afford to hire a lawyer one will be appointed to represent you before any questioning if you wish; you can decide at any time to exercise these

rights and not answer any questions or make any statements, and I asked them if they understood their rights, Mr. Garcia acknowledged that he understood his rights.

Q. Did you ask Mr. Garcia any questions at that point?

A. Yes, sir, I asked him what was on the boat, he replied, marijuana.

Q. Did he give you any indications of how much marijuana was on the boat?

A. No, sir, I asked him if he had any idea how many bales or how many pounds were on the boat and he replied, 'no'.

MR. JAMES: On behalf of Defendant Casal, I would rise to to [sic] object as to any statements made by Garcia on the basis of hearsay, on the basis of improper foundation and predicate, and three, it's improper in a trial

involving Mr. Casal to have a statement by an alleged codefendant.

THE COURT: Objection overruled.

Q. What did you ask Mr. Garcia?

A. What he had aboard.

Q. And his response?

A. Marijuana.

Q. Did he give you any indication of how much?

A. No sir, he advised he didn't know how much.

Q. What did you ask him concerning that?

A. I asked him if he knew how many bales were aboard and he replied he didn't know, I aksed him how many pounds he might have on baord [sic] and he replied he didn't know.

Q. Officer Walker, the individuals that you indicated to us previously, Mr. Casal and Mr. Garcia, do you see

Mr. Garcia located anywhere in this courtroom today?

A. The man with the orange shirt with Mr. James is Omar Garcia.

Q. Let the record reflect the witness has identified the Defendant, Omar Garcia. Do you see the individual that you indicated as being Mr. Casal located anywhere in this courtroom here today?

A. Yes, sir, he's sitting next to Mr. Garcia with a blue shirt.

Q. Let the record reflect the witness has identified Mr. Casal. Officer Walker, where was the San Rafael when you first stopped it?

A. I would estimate the Nine foot shoal marker which is off Sugar Loaf, it is approximately 2 miles off shore [sic], the San Rafael was just in the proximity of being right in the same distance off shore [sic] of what the Nine foot shoar

[sic] marker would be, 2 1/4 miles.

Q. Which side of the Nine foot shoal marker was the San Rafael?

A. If any, it was just a little outside of the 2 1/4 mile side, it couldn't be too much further because it's shallow shoals on the other side of it.

Q. You say they were the waters of Monroe County?

A. Yes, sir.

Q. What did you do after placing Mr. Garcia under arrest and Mr. Casal?

A. I asked Mr. Garcia if he would assist Officer Solly to confirm the statement that he had just made to me, reference to the marijuana and open up the forward hatch, Mr. Casal and Mr. Garcia went up to the forward part of the boat, they moved several fishtraps off the top of the hatch cover and assisted Officer Solly open up the hatch.

Q. And then what happened?

A. The hatch was opened up, there was a strong odor that emitted from the hatch being opened which was similar to me as that of being marijuana from previous experience.

Q. Then what did you do?

A. I asked Officer Solly to stay aboard the boat with Mr. Garcia, I asked him to run his boat in, I put Mr. Casal in the boat with me, and I told him that we would be heading back towards Key West at which time he got his boat underway and we started back towards Key West.

Q. Okay, what happened next?

A. As we were going in, I notified the Monroe County Sheriff Department by radio to get in touch with my supervisor, Captain Little, I had the Sheriff Department make contact by telephone

with two marine partol officers and advised them to come up on the radio or get underway with another boat to come out to assist me.

Q. Did they in fact do that?

A. Yes, sir, they did. Officer Melvin and Officer Dedelman came out in the boat, they met me off Geiger Key, just off the Boca Chica beach.

Q. What if anything happened when they came out?

A. When they came out, seeing that Officer Solly was what we call a rookie officer, she was inexperienced very much, I decided it was best to put Officer Melvin aboard the boat with Mr. Garcia, I put Officer Solly in the boat with me.

Q. And then what happened?

A. My supervisor came on the radio and requested that Officer Melvin...

MR. JAMES: Objection to anything the

supervisor requested.

Q. Just say what happened?

A. Officer Melvin was taken back into the Coast Guard dock where his boat is kept, he is the Captain on our 53 ft. boat, they wanted him to get underway to go out and possibly check for any other boats out there, at which time Mr. Casal was put in the boat with Officer Needleman, as I carried Officer Melvin in, Officer Solly was put back aboard the San Rafael, at which they stayed that way and we went into port with them, to the Coast Guard Station in Key West.

Q. What if anything did you discover or find or who did you find when you got into port here?

A. Captain Little was on the docks with the Sheriff Department, Detective Joe Valdes, there was Sgt. Papp and several other people, I don't remember

exactly who all was there.

Q. MR. FOWLER: Thank you, I have no further questions.

THE COURT: Cross-examination.

THEREUPON, CROSS-EXAMINATION BY MR. JAMES:

Q. At what time of day did you first see this vessel?

Q. Approaching the midnight hour on into the early morning hour, past midnight of September 17th going into the morning of the 18th.

Q. What were your duty hours the 17th of September?

A. I was working the 3:00 P.M. to midnight shift.

Q. You were due to get off at midnight?

A. Yes, sir.

Q. And, when was the first time you observed this vessel, the San Rafael,

what time?

A. A few minutes before midnight into a few minutes after midnight.

Q. Were you heading back towards Key West?

A. Yes, sir, I was.

Q. About how far in time were you, where were you going to dock?

A. Garrison Bight.

Q. How far away were you from Garrison Bight in your patrol boat?

A. In miles? about 30 minutes

Q. Time?

A. 30 minutes.

Q. Okay, so you were going to work overtime that night?

A. If it required, yes, sir, I don't work specifically by the clock.

Q. And, what time was it when you saw these Defendants in possession of this alleged marijuana?

A. Sometime after midnight, between twelve and one o'clock, I could say exactly.

Q. Any reason why you couldn't tell us exactly what time, did you have a watch?

A. Yes, sir.

Q. Did you observe your watch?

A. I had earlier, yes, sir, but I hadn't after the checking of the papers and the boarding of the boat and everything, I hadn't paid that much attention to the time.

Q. What time was it the last time that you recall checking your watch?

Q. About twenty-five after twelve.

Q. About twenty-five after twelve?

A. Was the lat time I recall seeing my watch.

Q. Where exactly was this vessel when you observed it?

A. It was on the ocean side of Sugar Loaf Key, in the vicinity of the Nine Foot Shoal marker, right off Sugar Loaf Key.

Q. That's on the ocean side of Monroe County?

A. Yes, sir.

Q. Where does Monroe County end on the ocean side, I'm not talking about jurisdiction, I just want to know where the boundary is?

A. Monroe County?

Q. Yes.

A. In that particular area, Maryland Shoal which is on the reef line protrudes out of the water on a high tide taking a three mile radius from Sugar Loaf with the arch and the arch from the three mile, the three mile arch from Maryland Shoal, Pelican Shoal would give you six miles approximately in that vicinity.

Q. What I'm saying is, if you understood my question, I just want to know where the boundary of Monroe County is, I don't care about the three miles of jurisdiction, doesn't the jurisdiction of the State of Florida actualy [sic] extend three miles ocean side from its boundary?

A. From the nearest point of land providing of those three miles, if there in another body of land that sticks out of the water on mean high water you take a three mile arch from that body of land that comes out of the water.

Q. Isn't it not true that the boundary finally ends some place and the State has three more miles of jurisdiction, right?

A. Yes, sir.

Q. Okay now, and this I'm asking on behalf of Defendant Casal, will you look

at this chart and show me where the boundary is and mark it. Not the jurisdiction now, where the boundary is?

A. I'm not a navigator, I couldn't mark on the chart exactly where the three mile mark is on the chart, sir, I'm not a qualified navigator.

MR. FOWLER: Your Honor, does Mr. James wish to introduce this as an exhibit?

MR. JAMES: On behalf of Defendant Casal, yes, I ask that it be so marked Your Honor, by stipulation it would be admitted into evidence on behalf of Defendant Casal.

THE COURT: Is the State stipulating? to this?

MR. FOWLER: No, sir...

MR. JAMES: On behalf of, I think I'm allowed to use it to impeach the testimony of this witness

THE COURT: Motion to admit it into evidence is denied.

MR. JAMES: Your Honor, I would ask on behalf of Defendant Casal that this Exhibit be marked for Identification solely for impeachment purposes.

THE COURT: You can have it marked for Identification, Defendant's Exhibit A for Identification.

MR. JAMES: For Defendant Casal.

THE COURT: All right.

Thereupon, chart marked for Identification for Defendant Casal as Defendant Exhibit A.

Q. Did you have any navigational equipment out there that night?

A. Only a compass.

Q. Did you have any other navigational equipment other than a compass?

A. No, sir.

Q. Did you have a chart?

A. No, sir.

Q. You had no chart?

A. No, sir.

Q. All you had was a compass, right?

A. Yes, sir.

Q. Looking at this chart, can you tell me where Nine Foot Shoal light is?

A. Right here. (indicating on chart)

Q. Now, on this chart, can you tell me where the boundary of Monroe County is, where Monroe County stops?

A. Yes, sir, right here. (indicating on chart)

Q. Will you please take a pen and mark where the line and draw me the line where Monroe County stops on this chart?

A. How would you want me to mark it, Mr. James, just an x on it?

Q. Kind of draw an a and a B, two ends.

A. A and B.

Q. And this line as its [sic] coming that you've marked A on one end and B on the other is the...

A. This is what I reference to as the three mile arch, from here and from this point of land. American Shoals is just outside of Florida waters.

Q. American Shoals is just outside, now this line, is not that the line where the three mile limit, the three mile jurisdiction is?

A. That is Monroe County.

Q. I'm asking you, isn't this line three miles from the boundary, isn't the boundary of Monroe County actually three miles inside?

A. No, sir.

Q. It's not?

A. Not in the chart that I've worked with, they are not.

Q. You realize the difference I'm

talking about, where you have the three mile jurisdiction on from your ocean side boundary, do you realize the difference that I'm getting at, I just want to make sure.

A. No, sir, I'm not really sure.

Q. Okay, you are familiar are you not, as you testified that the State of Florida has jurisdiction three miles to the ocean side from their boundary, right?

A. Yes, sir.

Q. Okay, so where Florida ends, if it ends right here, (indicating on chart), it still has jurisdiction three more miles out, right?

A. No, sir.

Q. We don't have?

A. Not unless there is a point of land at that other three mile mark.

Q. Isn't it that you've got juris-

diction three miles out from your furthest point of land?

A. Yes, sir.

Q. And where is your point of land, isn't that found where your boundary is?

A. No, sir, the furtherist [sic] point of land would be Pelican Shoal or Maryland Shoal because you're taking your three miles and the nearest point of land would be Pelican Shoal or Maryland Shoal.

MR. FOWLER: Your Honor, May we approach the Bench.

THE COURT: Yes, sir.

Thereupon, Counsel for the State and the Defendant approached the Bench.

MR. FOWLER: Your Honor, if Mr. James wishes to attack the jurisdiction of this Court, I don't think this is the proper time to do it.

MR. JAMES: No, I'm attacking the

venue, I've got to get to where the boundary of Monroe County is, I'm attacking the venue not the jurisdiction.

THE COURT: What are you saying?

MR. FOWLER: So far I haven't heard anything about venue, all I've heard is jurisdiction. What I'm saying, if it's an attack on jurisdiction this is not the palce [sic].

THE COURT: To be honest with you, you confuse the Court the way you're talking, I think I'm following you but I don't think this witness is quite capable of telling you, unless you're atalking [sic] about jurisdiction.

MR. JAMES: This witness is the one that's testifying in Monroe County, Florida Monroe County [sic], Florida, so therefore I ha ve [sic] to attack him.

THE COURT: He told you where it is, he put a mark on there as to where it is,

didn't he?

MR. JAMES: The three mile mark,

THE COURT: Didn't he put a mark on there as to where this occurred?

MR. JAMES: No, sir.

THE COURT: But he told you where?

MR. JAMES: He told me.

THE COURT: Frankly, I don't think this witness can go into, you are getting into questions of law, now.

MR. JAMES: No, sir, I'm getting into, he says it happened in Monroe County, Florida, fine, I'm asking does he know where Monroe County is, where does it state [sic] and where does it end.

THE COURT: When it comes to jurisdiction, I mean, you can, the State's statements are well taken by the Court, if you're establishing where it was, the Court will decide whether there's jurisdiction or not.

MR. JAMES: No, sir.

THE COURT: As to venue...

MR. JAMES: Venue must be alleged and proven, that's what I'm going after, if it did not occur within the boundary of Monroe County, Florida/ [sic]

THE COURT: That's what I'm saying, I thought you had had him pinpoint on that map the area where this occurred.

MR. JAMES: No, sir, he did not mark it.

THE COURT: He told you, now you're having him mark boundaries apparently over a distant as to the boundaries of Monroe County, I mean, if you took that Federal decision, laying that out, you'd have to work hard to do that, this witness can't do that, I don't disagree with you to, you're perfectly entitled to establish where it occurred.

MR. JAMES: Right.

THE COURT: As to the question of whether it is or is not within Monroe County, I don't think you've established that, obviously, you're in the belief it is.

MR. JAMES: Sir, I'm entitled to go into the reasonableness as believed.

THE COURT: I don't know what the State is saying.

MR. FOWLER: I don't know what Mr. James is doing, frankly.

BY MR. JAMES:

Q. Mr. Walker, you're aware of the dimensions of Monroe County, where it starts and where it stops.

A. On the ocean side we have 3 miles from the nearest point of land unless such land encompasses an area that if you pick up, if you have 2 islands, say, Loggerhead Key which is off Sugar Loaf and Summerland Key, from Loggerhead Key,

if there was another island sitting out there that was 4 miles, you take the 3 mile arch from Loggerhead Key, from the southernmost point out, you take this island over here that is above mean high water on high tide on mean high water, it still protrudes above the water, at that point, you can take a three mile arch all the way around this point of land above this point off shore which would enclose a larger area.

Q. In your opinion all that would be Monroe County, Right [sic]?

A. Yes, sir, if I arrest somebody in that area, it's returnable to the courts of Monroe County, Florida.

Q. Because it occurred within the boundaries of Monroe County, right?

A. Yes, sir.

MR. JAMES: I have no further questions.

REDIRECT EXAMINATION BY MR. FOWLER:

Q. Officer Walker, did you receive any indication from where this boat had originated, the San Rafael?

A. Yes, sir, when we stopped the boat inquiring about the registration, I asked Mr. Garcia where he fished out of, he said he had been fishing out of Miami, that he had moved to Woodsy Niles and he had fished out of there for one day.

Q. That was the day you stopped him?

A. Yes, sir.

Q. Where is Woodsy Niles's Fish House located?

A. It's on the southeast end of Stock Island, it would be on the east end of Stock Island on the ocean side in Monroe County.

Q. What was the closest county to the point at which you stopped the San

Rafael?

A. Monroe County.

MR. FOWLER: No further questions.

THE COURT: Recross?

THEREUPON, RECROSS EXAMINATION BY MR. JAMES:

Q. Nine foot shoal you say is 2 1/4 miles from the nearest point of land...

MR. FOWLER: You Honor, I'm going to object, my redirect examination tof [sic] Officer Walker did not mention anything about Nine foot shoals and didn't remotely refer to it.

THE COURT: Objection sustained.

MR. JAMES: I then ask the Court to hold Officer Walker, I intend to call him as a witness on behalf of one of my Defendants.

THE COURT: The witness may step down. Call your next witness.

MR. FOWLER: The State will call Eddie

Melvin.

THEREUPON, EDDIE MELVIN was called as a witness for the State and after being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FOWLER:

Q. State your name and occupation, please?

A. Eddie Melvin, I am a Marine Patrol Officer.

Q. How long have you been so employed?

A. Approximately 5 years.

Q. Were you employed by them on the 18th of September of last year?

A. Yes, sir.

Q. Did you have occasion to answer a call in the early morning hours of that day?

A. Yes, I did.

Q. Will you tell us briefly what you did concerning your involvement with

that particular answer?

A. Officer Needleman picked me up, we proceeded out to where the boat was.

Q. Which boat was that?

A. The San Rafael.

Q. What did you do once you got there?

A. I went aboard the boat, Officer Solly came off at that time and she was off maybe five minutes, she came back and I got off the San Rafael and went back to oneof [sic] our other patrol boats.

Q. During the period of time that you were on the San Rafael, was anything on that boat disturbed or changed or otherwise altered?

A. No, sir.

MR. FOWLER: Thank you.

THE COURT: Cross-examination?

MR. JAMES: No cross examination.

THE COURT: Thank you, you may step down.

MR. FOWLER: The case will call Carl Schlocher.

THEREUPON, CARL SCHLOCHER was called as a witness for the State and after being duly sworn, testified as follows:

DIRECT EXAMINATION, BY MR. FOWLER:

THE COURT: Mr. James, you [sic] assistant went out the door with an exhibit.

MR. JAMES: My exhibit, I withdraw it, it is my exhibit, I offered it for identification, it is not in evidence, I withdraw the exhibit at this time.

THE COURT: The Exhibit filed for Identification is supposed to remain with the Clerk.

MR. JAMES: I'll call and have it returned, if the Court wishes.

THE COURT: It's already outside of

this court.

MR. JAMES: Yes, sir.

BY MR. FOWLER:

Q. Will you state your name and occupation, please?

A. Carl Joseph Schlocher, Florida Marine Patrol Officer.

Q. How long have you been with the Florida Marine Patrol?

A. 7 1/2 years.

Q. Were you so employed on the 18th of September of last year?

A. Yes, sir.

Q. Did you have occasion to answer a summon in the morning hours of that day?

A. Yes, I did.

Q. Will you tell us what you did with regard to that call?

A. It was approximately one o'clock in the morning of the 18th, I received

a call from Captain Little to meet him down at the Coast Guard Station and standby [sic] there.

Q. Did you do that?

A. Yes, I did.

Q. And what subsequently happened?

A. Eventually the San Rafael was brought in, and I stood watch on it until eight o'clock that morning when we started unloading.

Q. Will you describe please the condition of the San Rafael when you saw it?

A. Counselor, what do you mean by the condition?

Q. Did you notice anything unusual about it?

A. Well, when I boarded it I could smell an odor which appeared to be marijuana.

Q. Subsequent to that, did you have an opportunity to witness anything

happening concerning the cargo of that particular boat?

A. No, sir.

Q. During that morning?

A. That morning, yes, sir, did something happen to the cargo of that particular boat that you were a participant?

A. Yes, the police started unloading the cargo at approximately nine o'clock in the morning.

Q. And what was your particular function in the unloading process?

A. I numbered the bales as they were brought out of the hold, set on the dock and they were numbered at that time.

Q. I ask you to step down Officer to step down from the stand and view what is marked as State B, C, D, for Identification and ask if you can identify them?

A. Yes, sir.

Q. And how is it athat [sic] you identify those items?

A. By the numbers that were painted on the outside of those three bales, that is apray [sic] paint that was used to amark [sic].

Q. Did you in fact spray that on yourself?

A. Yes, sir.

Q. From where did those bales come?

A. They came from the San Rafael off the hold.

Q. Did you also in the course of numbering the bales that came off the San Rafael, how many of them did you number, Officer Schlocher?

A. 421.

MR. FOWLER: Thank you sir.

MR. JAMES: I have no questions.

MR. FOWLER: The State will call Joseph Valdes.

THEREUPON, JOSEPH VALDES was called as a witness for the State, and after being duly sworn, testified as follows:

DIRECT EXAMINATION, BY MR. FOWLER:

Q. Would you state your name and occupation, please?

A. Joseph A. Valdes, Jr., I'm a detective lieutenant Monroe County Sheriff's Department.

Q. And, how long have you been with the Sheriff's Department?

A. Ten years.

Q. Were you employed by them on the 18th of September of last year?

A. Yes, I was.

Q. Did you have occasion in the early morning hours of that day to be summoned to the Coast Guard Base?

A. Yes sir, I was.

Q. Would you describe to the Court, and these ladies and gentlemen of the

jury what your function was concerning that particular incident?

A. I was asked to come to the Coast Guard Station early that morning to assist the Marine Patrol. The dispatcher reported to me at that time that it was requested that my presence be made at the Coast Guard Station to assist them with a drug investigation. I arriaved at the Coast Guard Station and waited until approximately 3:15 in the morning when a commercial-type lobster fishing boat arrived at the dock and the name of the boat was the San Rafael.

Q. Did anyone else arrive with the San Rafael?

A. Yes.

Q. Who was that?

A. Marine Patrol Agents, Jenna Solly and Mark Walker. During this time, I met with--while I was there, just pre-

ceeding that, I met with Marine Patrol Agent Carl Scholgl [sic] who was also standing by to assist in this investigation.

Q. Okay. When Officers Solly and Walker came in, was anyone in their company?

A. Yes.

Q. Do you see those individuals located anywhere in this Courtroom?

A. Yes sir, I do.

Q. Would you identify them to the Court, please, by where they are sitting and what they are wearing?

A. The two Defendants sitting to the left of their attorney, Manny James. The Defendant with the red shirt was present and the Defendant in the blue shirt was also present.

Q. Did you come to know either one of their names?

A. Yes.

Q. Would you name each Defendant, again by what he's wearing, please.

A. Yes. The Defendant with the red shirt is Omar Garcia and the Defendant with the blue shirt is Constantino Casal.

Q. What did you do when the boat came in?

A. Alright, in connection with assisting the Marine Patrol, once they tied up the boat and completed their maneuvers in docking the boat, and they removed the Defendants from the boats and they were allowed to gather some of their possessions from the San Rafael, I then talked with both of the Defendants. Preceeding this, I determined that one was able to speak and understand the English language which was Omar Garcia and the other Defendant, I determined from speaking with him, could only

understand and speak Spanish.

In connection with talking to these two suspects at that time, first, I talked with Casal. I advised him first of his constitutional rights. I advised him of his rights in Spanish and...

Q. What rights did you advise him of?

A. I advised him that he had the right to remain silent. I advised him that anything or any statements that he made to me could be used against him in a Court of law. I advised him that he had the right to have his attorney present with him during the time that I questioned him and during all phases of the questioning and that if he could not afford to hire an attorney, that the State of Florida would appoint one to represent him and that the State would appoint such an attorney to represent him

prior to me or him answering any questions. He indicated to me that he understood those rights.

Q. And what did Mr. Casal tell you, if anything, regarding...

MR. JAMES: Objection on behalf of Defendant Garcia as to anything Casal may have said at this time. Improper predicate, improper foundation and improperly admitted in a joint trial of the Defendants.

THE COURT: Objection overruled.

Q. What did Mr. Casal say concerning himself in this particular regard?

A. I questioned him in connection with the suspected marijuana which was aboard the San Rafael. He stated to me that he knew that the marijuana was on board the San Rafael.

Q. Officer Valdes, what other function did you have in reference to this

particular case?

A. In connection with this case, I assisted the Marine patrol in performing the necessary preliminary field test and pursuant to that, I returned to the docks with the officers and assisted in removing the suspected bales of marijuana from the boat.

Q. Did you have occasion to come into custody of any of those particular items at any time?

A. Yes sir. After we removed the bales of marijuana from the vessel and we sampled every tenth bale. From every tenth bale we withdrew a sample of the vegetable material that was contained in every tenth bale and we removed approximately 421 bales from the vessel. Each bale was individually weighed and pursuant to removing all of the bales of suspected marijuana from the San Rafael,

I took three of the bales which were numbered 1 and 2 and 248, respectfully [sic], and we removed them to set them aside to be held as evidence.

Q. Did you at any time take scustody [sic] of the three bales?

A. I allowed Agents Walker and Solly to transport those three bales in my presence in their unit, patrol unit to the Sheriff's Department and maintained control of the samples that were taken from every tenth bale. We then, together, returned to the Sheriff's Department and they were submitted in my personal care, custody and control. After I receipted the suspected bales of marijuana, I locked them in a locker here at the Sheriff's Department and they remained tin [sic] that locker, sealed, until they were transported to the crime laboratory upstairs on the

second floor from where they were originally kept overnight and at three o'clock in the afternoon, the following morning I submitted them to Norman Lee our Criminalist in our crime laboratory to be analyzed.

Q. You said you stored the bales overnight somewhere. Where is it that you stored them overnight, Officer Valdes?

A. That particular night they were stored in the photolab room.

Q. What condition were the bales in when you stored them that evening?

A. The bales were wrapped and they were sealed and initialled for identification and when I went back into that room the following day to submit them to Norman Lee in the Crime Laboratory, they were in the exact condition.

Q. Had they been tampered with in

any way?

A. No sir.

Q. Det. Valdes, I would ask you, with the Court's permission to step off the stand view State's Exhibits A, B, C and D for identification.

A. In connection with State's Exhibit marked A-4, I can identify this as one of the bales that was transported and submitted to me and subsequently transported to the Crime Laboratory by our case number, my initials.

Q. Okay. What is the number on that particular bale?

A. I can't tell because of the scraping--it's scraped and the spray paint is coming off of it.

Q. Can you identify this as one of the three bales you submitted to Mr. Lee?

A. Yes sir because it has the case number and my initials on it.

Q. As to these other two?

A. Identify this bale because it also has the same number of the investigation and my initials and again the spray paint on this particular bale has deteriorated where I can't make out what it says.

Q. As for...

A. ... this exhibit marked A-2. I can identify the exhibit marked State for Identification A-3 because again it has the case number and again it has my initials. And, State exhibit for identification marked A-1, a plastic bag which has samples in it. Again, I can identify the bags which have the case number of the investigation and my initials.

Q. Are those, in fact, the same bags you submitted to Norman Lee on the afternoon of the 19th?

A. Yes sir.

MR. FOWLER: Thank you, I have no further questions of this witness.

THEREUPON, CROSS EXAMINATION BY MR. JAMES:

Q. Detective, would you come back over by thebags [sic], please. When you first saw that, take this exhibit, when you first saw that, what time was it?

A. When I first saw these bales at all it was approximately 3:15 in the morning.

Q. Okay. And what did you affix to those bales, if anything?

A. At that particular time?

Q. Yes. At any time. Starting then. From then to now.

A. Well, at the time that the bales were removed from the boat, I put my initials and the case number assigned to the investigation.

Q. Show me what do you mean by that, right there on the side?

A. Right here. (indicating)

Q. Written in red?

A. Yes.

Q. Case number and you [sic] initials?

A. Yes, sir.

Q. What else did you afix [sic] to that bale if anything?

A. Just my initials.

Q. Did you afix [sic] any type of seals to the bales?

A. No, sir, they were wrapped and they were sealed already with master tape.

Q. You, yourself at the time you had these three bales brought to the Sheriff's Office, you didn't look into the contents of those bales, did you?

A. No, sir.

Q. So when you testified that you

recognize this bale, is it not true what you're actually testifying to, you're identifying this outside plastic bag wrap.

A. I'm identifying the bale which is exactly as it appeared when it was removed from the boat which I can identify with the case number that we assigned to the investigation and my initials that I can idenitfy [sic], the only bales that were open and samples withdrawn, random samples was every ten bales.

Q. Let's say this bale, what's inside this plastic wrapping, what was in it when you took it out, when you took it out from the San Rafael, what's in here, what is on the other side of this plastic, white plastic container?

A. I don't know, our chemist will have to tell you that.

Q. I'm not saying the exact composi-

tion, I want to know if you know what kind of box because you didn't look in there?

A. No, sir.

Q. And so you don't know if this same box is in here now that was in there the day you took it from the boat, do you?

A. I testified that when we received those bales they were completely sealed and with the exception of every tenth bale which we removed the vegetable material from, with the exception of those, no other bales were open, the rest remained sealed and they were submitted sealed to the Monroe County Crime Laboratory.

Q. Okay, and when you submitted them sealed, at the time you submitted them you didn't know what was in there, right, you didn't know what kind of box or

packages inside that white plastic, right?

A. I can't identify the vegetable material, I'm not a chemist.

Q. Right, and you can't identify whatever kind of box is inside this plastic wrapping, can you?

A. This particular one?

Q. Yes, this particular one?

A. No, sir, I can't.

Q. You can't tell me that the same box is inside there now that was inside there September 18th, can you?

A. I can state that that is the bale that came off the boat which we removed on that morning because I can identify it with my case number and my initials.

Q. Can you tell me the contents of the same?

A. No, sir, I'm not a chemist, I didn't attempt to open the bale.

Q. I'm not saying what it is, I'm

just saying that you can't tell me now that the contents of that, that are inside that white plastic wrapping are the same contents that were there on September 18th, 1977, regardless what they were or were not, right?

A. Sir, I can testify that all the bales were similar one to the other and that every tenth bale was sampled and we ran field tests on the ones that we sampled and we received a positive reaction for suspected marijuana.

Q. That isn't what I've asked, Lieutenant, did you ud [sic] understand my question? All I've reference to is this one specific package.

A. I can only testify that that package was submitted to the Monroe County Crime Laboratory in the exact condition as I see it now, to the best of my knowledge.

Q. You storaged that overnight in a photo lab, is that correct?

A. Yes, sir.

Q. And who has access to that photo lab?

A. The only two people that have keys to the photo lab are...

Q. I'm talking about September 18, 1977?

A. With the exception of myself is Detective Lieutenant Conradi.

Q. Those were the only two on September 18, 1977, that had keys to the photo lab?

A. To my knowledge, yes, sir.

Q. Where is the photo lab located?

A. The photo lab is located in the old section of the building which is behind this building, located through a steel bar door and three other doors to get to the photo lab and it's located

directly, next to the detective's offices in the corridor between the record section and the detective division.

MR. JAMES: Thank you, I have no further questions.

THE COURT: Any redirect?

MR. FOWLER: No, sir.

THE COURT: Ladies and gentlemen, we are going to stop here for today, without me going all over it, I remind you what I said about exposure outside the courtroom on anything connected with this case, it is a great temptation to go home and talk about it, listen to the news and that sort of thing, please control it and follow the instructions on that. We will recess for the night and start in the morning at nine-thirty.

Thereupon, Court recessed and reconvened the following morning, September 21, 1978.

THE COURT: Following the overnight recess, the Court calls case 77-853 CF, State of Florida versus Constantino Casal and Omar Garcia. Is the State ready to proceed?

MR. FOWLER: Yes, sir.

THE COURT: Is Defense ready to proceed?

MR. JAMES: Yes, sir.

THE COURT: Bring the Jury in, please.

Thereupon, Jury returned to the courtroom and took their respective seats in the jurybox.

BAILIFF: The Jury is present, Your Honor.

THE COURT: Good morning, ladies and gentlemen, we will start in this morning where we left off yesterday afternoon. State call your next witness.

MR. FOWLER: The State will call Violet Lenze.

THEREUPON, VIOLE LENZE was called as a witness for the State and after being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FOWLER:

Q. State your name and occupation, please?

A. Violet Lenze Roberts. My occupation at the present time?

Q. Yes, mam [sic].

A. Insurance underwriter.

Q. By whom were you employed on the 18th of September of last year?

A. Monroe County Sheriff Department.

Q. Did you have occasion that morning to respond to a call from the Coast Guard State?

A. Yes, I did.

Q. What was to be your function in connection with that particular call?

Q. Inventory officer of the seized contraband.

Q. And what exactly did you do in connection with the articles?

A. I inventoried the bales by number and by weight.

Q. And how many by number did you inventory?

A. 421.

Q. What did that come out to in weight?

A. Approximately 26,257 lbs.

MR. FOWLER: Thank you, no further questions.

THE COURT: Cross examination?

MR. JAMES: I have a motion at the side bar, if it please the Court.

Thereupon, Counsel for the State and the Defendant approached the Bench.

MR. JAMES: Your Honor, I move to strike the testimony of Violet Lenze as being completely irrelevant, all she's answered the number of bales and weight

of some unknown bales which are not identified, not admited [sic] in evidence, I think it is irrelevant whatever she weighed down there.

THE COURT: What says the State?

MR. FOWLER: Your Honor, the State feels it's entirely relevant, tthe [sic] testimony is that all bales were similar to these, the packaging, description and size, these three bales were selected at random from that entire lot, and based on that reasonable presumption can be made that the remainder of that load was in fact, it would prove to be shortly.

MR. JAMES: I don't think you can make that presumption Your Honor, the samples are from every tenth bale, the other nine bales may have or may not have been.

THE COURT: I deny your motion to

strike.

THEREUPON, CROSS EXAMINATION BY MR. JAMES:

Q. Mrs. Roberts, you yourself of your own personal knowledge don't know what the contents of any of those bales were that you all weighed down there, do you?

A. I know what it looked like.

Q. I'm not worried about what it looked like, I'm saying of your own person knowledge you didn't know?

A. No.

Q. You are not a chemist, and you're not a criminalist?

A. No.

Q. Qualified under the laws to analyze the substance and tell us what it is?

A. No, sir.

Q. How were the bales weighed, were

they weighed in its entirety, with the cardboard box and all of the contents?

A. Yes, sir.

Q. The contents of the wrapping and the box were not removed tand [sic] the contents were not weighed individually, correct?

A. No, sir.

Q. And the boxes, bales were not opened up?

A. No, they were not.

Q. So, you yourself in the majority of the bales couldn't look down into there and see what if anything was contained in the bales, right?

A. No.

Q. All you all were doing at this point, weighing some cardboard boxes basically that were wrapped in some type of plastic, some type of plastic wrapping, right?

A. Yes, and samples were being taken from the bales.

Q. From some individual bales?

A. Right.

Q. But your testimony was that you weighed up all this.

A. That is correct.

Q. And you couldn't tell us for sure what was contained in each one of those cardboard boxes that you didn't open up and inspect, right?

A. To my knowledge, no.

MR. JAMES: Thank you, I have no further questions.

THE COURT: Any redirect?

MR. FOWLER: No, sir.

THE COURT: Thank you, you may step down. Call your next witness.

MR. FOWLER: The State calls Norman Lee.

THEREUPON, NORMAN LEE was recalled as

a witness for the State.

THE COURT: You're still under oath, Mr. Lee.

MR. LEE: Yes, Your Honor.

DIRECT EXAMINATION BY MR. FOWLER:

Q. Mr. Lee, when last you were on the stand, you told us you were property custodian for the Monroe County Sheriff Department, do you function in any other capacity?

A. Yes, sir, I am the criminalist employed by the Monroe County Sheriff Department, I operate the Sheriff Department Crime Laboratory which entails the examination of evidence submitted upon request.

Q. What exactly is a criminalist?

A. A criminalist can be defined as one who examines, identifies, individualizes, compares physical evidence by applying natural sciences such as

chemistry to law science matters.

MR. FOWLER: Mr. James, will you stipulate to Mr. Lee's qualifications?

MR. JAMES: Yes, sir.

MR. FOWLER: As an expert in the identification of Cannabis Sativa or other controlled substances?

MR. JAMES: Yes, sir.

THE COURT: Ladies and gentlemen, it has been agreed upon between the attorneys that this witness is an expert in examining, testing and identifying unknown substances, is that a fair statement, gentlemen?

MR. JAMES: Yes, sir.

THE COURT: So you will treat him as being said expert. Go ahead.

Q. Mr. Lee, when you cane the last time you brought what has now been marked as State Exhibit A, B, C, and D for Identification, have you had the oppor-

tunity to perform any examinations on those items that you brought to court.

A. Yes, sir, I have examined all four items.

Q. As the State's Composite Exhibit A for Identification, 41 small brown paper bags, will you describe please for us what exactly you did concerning testing the material in that composite exhibit?

A. Yes, sir, I found 42 bags present in this package, I chose 21 of these packages at random and performed, after weighing the material contained in these packages, I examined the material under a low powered stereo-microscopic microscope in the laboratory and performed also chemical tests on the material present in the packages.

Q. What kind of chemical test did you perform?

A. The chemical test that I performed was called the Duquenois Levine examination, modified Duquenois Levine test for tetrahydrocannabinol, the active ingridient [sic] in Marijuana.

Q. And what did the test that you performed on 21 of those envelopes indicate to you?

A. I received positi-. microscopic evaluation ofor [sic] Cannabis Sativa, and also positive chemical tests for tetrahydrocannabinol, concluding that the material contained in the packages were Marijuana of Cannabis Sativa.

Q. In how many of those 21 packages that you examined that day?

A. In all of the 21 packages that I examined, sir.

Q. I call your attention to what has been marked as State Exhibits B, C, and D for Identification, and ask you if

you've had the opportunity to perform any tests on those particular items?

A. Yes, sir, I did, I weight each package and I also removed a representative sample of the material from each package by cutting an incision into the package and getting a sample from within the core of the package itself to represent the contents of the package. The same tests were performed on these samples.

Q. What was the result of those tests?

A. My item one, I'm not certain what package this would correspond to but one of the white plastic wrapped packages was found to weigh 67 lbs., the other white plastic wrapped package was found to weigh 62 lbs. and the third clear plastic wrapped package containing the burlap and brown paper wrapping was

found to weigh 51 lbs., this totaled 180 lbs. The examinations performed in the material removed from each one of those, I also identified as being Cannabis Sativa more commonly known as Marijuana.

Q. Mr. Lee, when you weighed the items, those three items, State Exhibit B, C, and D, did you remove the cardboard box and the burlap and the rest of that?

A. No, sir, I didn't.

Q. Did you have an opportinity to examine the wrappings and the material contained in those three packages, around those three packages?

A. Other than what I just described, the white packages contained a cardboard cigarette box, Marlborough cigarette box and the material is contained therein.

Q. Is there any possibility that those three packages weighed 80 lbs.

MR. JAMES: I am going to object to that, that calls for a conclusion in the mind of this witness, there has been no proper predicate of foundation, his expertize [sic] went to analyze substances and tell us what they were.

THE COURT: Sustain the objection.

Q. Mr. Lee, did you weigh the items, State Exhibit A for Identification in the small brown paper bags?

A. I weighed the contents in the bags, not the bags in themselves.

Q. And what did the contents of the small bags come up to?

A. The total amount of material contained in the 21 of the packages weighed 302.6 gr., this material was all identified as being Cannabis Sativa.

Q. What does 302.6 gr. come up to real weight.

A. It would be slightly less than

3/4 ofone [sic] pound, or approximately 10 to 12 oz. of material.

Q. Mr. Lee, are you familiar with weighing certain items do you have particular training as to how items are weighed?

A. Yes, sir.

Q. Will you describe what training you've had concerning taking the weight of items?

A. This would be using and making certain that the scales that you are using are accurate by checking them periodically to make certain that they were within limits.

Q. Did you do that concerning your scales?

A. Yes, sir.

Q. Go ahead.

A. In many incidents packages, whole packages will be weighed, the contents

removed therein, the weights of the packing material can be determined, noting the weights of the material contained therein, total weight of the package going to determine the weight of the packing material itself, and also from determining this one could use this as a, by just weighing a complete package wrapped exactly the same manner, you could subtract the tear-weight and determine what the enet-weight [sic] of the package would be. I've been involved with weighing materials definitely over the past 8 yrs., and have been familiar with weight and measures, I would have to say, probably since I was 6 or 7 years old.

Q. Have you had the opportunity to weigh a number of items similar to the 3 which are here in the courtroom?

A. Yes, sir, most definitely.

Q. In your experience in the past, have any 3 similar items packaging material weighed a total of 80 lbs?

A. No, sir, they have not had the packaging material present in these exhibits could not total 90 lbs. in any way, shape or form.

MR. FOWLER: Thank you, sir.

THEREUPON, CROSS-EXAMINATION BY MR. JAMES:

Q. Did you weigh the packaging material in this case?

A. No, sir, they were not separated and weighed.

Q. Have you ever weighed packaging material similar to this?

A. Yes, sir, I have.

Q. You have, when?

A. Upon occasion in the last couple of years.

Q. Tell me what type of packing

material are in these 3 exhibits?

A. The clear plastic wrapped package contains plastic material, masking tape, burlap, wrapping material and also brown paper wrapping material. The two white plastic wrapped packages contain also masking tape and cardboard cigarette boxes.

Q. Okay, in these 3 specific exhibits, did you remove the contents and weigh just the contents?

A. No, sir, I did not.

Q. You weighed the entire package together, the box and the wrapping material and the contents, correct?

A. That's correct, sir.

Q. Other than making a decision and taking out a core sample, did you open out the boxes and spread out the contents and examine it?

A. No, sir, I did not.

Q. Then you're not sure, there may be something else contained in those packages other than vegetable material, right, that you didn't examine.

A. Will you please rephrase that?

Q. Okay, you cut down through the middle and removed core sample, right?

A. Yes.

Q. But you didn't open up the box and visually inspect all the vegetable material to make sure that there was nothing but a vegetable material contained in the box, right?

A. No, sir, I did not open the packages but the manner in which I sampled them would indicate what's in the package.

Q. How many core samples did you take out of each exhibit?

A. There was one single incision, if you'd like me to indicate where the

incision is.

Q. Answer my question, if you would, you only, in this whole package, you made one incision, reached down and took out a core sample from womewhere in there, correct?

A. I believe that's correct, sir.

Q. You, yourself didn't visually examine to see what else was contained in there?

A. No, sir.

Q. You, yourself don't know what else was contained in here other than the core sample you took out which you assume to be representative of the entire thing, right?

A. Yes, sir.

Q. There might not be, you may have, what if your [sic] took the incision right here at this end, okay, see where I'm pointing?

A. Yes, sir.

Q. The same material may or may not be present in the remainder of the bale, correct, right?

A. There is a very minor possibility that that could be correct but in all of the packages that I've gone through and examined, this is an accepted manner of sampling the material from these packages.

Q. Fine, but you yourself cannot get up and tell us that 100% of what's contained in the rest of this bales [sic], since you didn't examine it even visually, right?

A. I examined the sample that I removed from it.

Q. The sample, but the remainder of the material, whatever it might be contained in the rest of the bale you did not examine, right?

A. That is correct.

Q. You did not perform any test on the remainder of the material, right?

A. That is correct, sir.

Q. And you didn't remove any foreign material, seeds, stems, stalks, what have you from the remainder of the material did you?

A. No, sir, I did not.

Q. So the weight that you have given us is the total weight of anything that is contained in there, right?

A. Yes, sir.

Q. You're just telling what that package weighs?

A. That is correct, sir.

Q. What is the weight of the actual samples that you took from Exhibit B?

A. The sample weight from B, C, and D were replaced back in the package without weighing the material in itself.

A. Not the material that I removed from the 3 packages.

Q. So you don't know what weight, if any, was in the representative samples that you removed?

A. There was an approximate weight of...

Q. Not approximate, do you know?

A. Exactly, no, sir, I do not, I did not weigh.

Q. You told me that you've been weighing things since you were 6 years old, you calibrate your scales, but you didn't happen to weight the samples you took?

A. I weighed the package sir, and I examined.

Q. Did you understand my question?

A. I believe so, I'm trying to explain what...

Q. I just want an answer to my ques-

tion, yes or no. Did you weigh the representative samples taken from Exhibits B, C and D?

A. No, sir, I did not.

Q. Now, you say that you weighed the contents of some 21 paper bags, right?

A. That is correct, sir.

Q. Okay, when you weighed and that weighed a total of 10 to 12 ozs., right, the contents of the 21 bags, you remember that?

A. It weighed 203.6 grams.

Q. Which you told the prosecutor which is roughly 3/4 lb. or roughly 10 to 12 ozs., right?

A. This figuring 28,35 grams per oz, figuring 16 ozs are contained in one pound.

Q. Okay, when you weighed that, you didn't clean it and remove the foreign material, stems and seeds from that

sample, did you?

A. The stems were not removed, the seeds were not removed, they weighed in total, however, the material contained in the sample that I weighed was just vegetation and not parts of packaging materials.

Q. But it did include the weight from the stems and the seed that were present in that vegetable material?

A. Yes, sir, it did.

MR. JAMES: Thank you, I have nothing else.

THE COURT: Redirect?

THEREUPON, REDIRECT EXAMINATION BY MR. FOWLER:

Q. Mr. Lee, will you give me a [sic] approximation of time that would take you to remove the stems and seeds from the 21 little brown paper bags of the material that's contained in there?

MR. JAMES: Your Honor, I object to the question being completely irrelevant to the issue here today.

THE COURT: Objection overruled.

A. Will you please repeat the question.

Q. And you give me an idea how much time it would take you to separate the seeds and stems from the 21 little brown paper bags that you examined.

A. I would have to estimate that it would take between one half to one hour to remove stems and seeds from one of the small brown paper bags that are marked in State Exhibit A for Identification, that's in each specific bag itself.

Q. Just one specific bag?

A. Yes, sir, that is correct.

Q. Mr. Lee, approximately how long would it take you to remove the stems

and seeds from the material contained in the 3 packages, B, C, and D, here in the courtroom?

A. That would take weeks, possible [sic] months to separate stems and seeds.

MR. JAMES: Your Honor, I also object to that question on the grounds it being irrelevant, I move to strike.

THE COURT: Same ruling.

Q. Can you give us an approximation of how long it would take for 421 such bundles?

MR. JAMES: I would object to that question, Your Honor, the basis, there have been no 421 bales offered here and marked for identification, it is completely irrelevant.

THE COURT: Sustained.

MR. FOWLER: I have no further questions.

THE COURT: Recross?

THEREUPON, RECROSS EXAMINATION BY MR. JAMES:

Q. The question the prosecutor just asked you, it could be done, couldn't it?

A. Most definitely it could be done.

Q. And when somebody smokes Marijuana or Cannabis, they've got to clean it, you can't smoke the stems and the seeds, can you?

MR. FOWLER: Your Honor, I don't believe Mr. Lee has been offered as an expert on smoking Marijuana, simply for identification purposes.

THE COURT: Objection is sustained.

MR. JAMES: Your Honor, may I have the grounds for the objection, he's objecting to his own expert?

THE COURT: The witness has not been made an expert as to that, the Court

sustained his objection.

Q. Mr. Lee, are you familiar with the process by which Marijuana is cleaned in order to be able to smoke it?

A. Yes, sir, I am.

Q. In order to smoke it, don't you remove the stems and seeds?

A. In some incidents in evidence that I've examined I've found stem fragments and seeds present in Marijuana cigarettes and in other incidents I have found them well manicured and the stems and seeds removed from cigarettes that have been handrolled for the purpose of smoking Marijuana.

Q. Isn't it general accepted practice to clean and remove the vast majority if not all stems and seeds?

A. That would depend upon the individual that was preapring [sic] the cigarette himself.

Q. I'm asking are you aware of the general accepted practice, are you or aren't you?

THE COURT: I don't think we have any generally accepted practice, it's illegal. I'm not going to allow the question.

MR. JAMES: I'd like to put something into the record at the side bar.

Thereupon, Counsel for the State and the Defendant approached the Bench.

MR. JAMES: I object to the Court not allowing me to ask the question where there was no objection from the State and the Court sua sponti [sic] making the comment and not allowing me the question, I object to the ruling of the Court and I object to the trial Court interjecting itself into the trial.

THE COURT: It's in the record.

MR. JAMES: I have no further ques-

tions.

MR. FOWLER: Your Honor, at this time the State will ask that State Composite Exhibit A, B, C and D be admitted into evidence.

MR. JAMES: Your Honor, I object and I'd like to object outside the presence of the Jury.

THE COURT: All right, the Jury retire to the juryroom, please.

Thereupon, Jury left courtroom.

MR. JAMES: Your Honor, at this time I would object to the introduction of these exhibits into evidence, renew my motion to suppress, submit to the Court that this evidence was seized as the result of an illegal and improper search and seizure under no basis at all, I would ask the Court at this time to rule, the Statute giving the Florida Marine Patrol the authority to stop any

vessels that they desire for safety inspection check or documentation check, it's unconstitutional, I would move that there's no basis for probable cause whatsoever for stopping this vessel that was being lawfully operated on the water, therefore since it was stopped, the search was illegal, and I further submit that the search was the direct fruit or result of an improper and invalid confession, therefore it should be suppressed, the fruit of a poisonous tree.

I think there has been a lack of proper foundation as to the material contained in exhibits B, C, and D, I submit there has been an improper amount of evidence to show whats [sic] contained in 21 of the brown paper bags contained in exhibit A, since there has been no testimony as what's contained in some of those bags, there has been testimony

that 21 of them contained something, there has been no testimony whatsoever to show what the other 21 contained since the chemist did not perform a test on them, to admit those bags into evidence, I don't know which 21 since they were composite, he didn't tell me which 21 he examined and which 21 he didn't, so I submit to you that all 41 or 42, I'm not sure of the number, the Prosecutor said 41 and the witness said 42.

MR. FOWLER: That was an error when I said 41.

MR. JAMES: Okay, so there's 21 bags that we don't have a vague opinion of what they contained, but they are all mixed in there together so I'm not quite suire which part of that composite exhibit might be admissible or might not, now, I'm not receding from my argument that they, all of it should be

suppressed, but I think it lacks proper foundation as to 21 of those bags that are coming, I don't know what they contained.

THE COURT: Are all these things you're stating grounds for your objection to the admission of the proffered evidence?

MR. JAMES: Yes, sir.

THE COURT: What says the State.

MR. FOWLER: Your Honor, a recent case by the Third District indicates that a criminalist may make a reasonable assumption as to what the rest of the quantity contained is, from the samples that he used, the testimony is that all 21 samples contained Cannabis, they were all removed in the same manner, there is nothing particular [sic] different about the 21, that half of the samples submitted that being the number 21, were

selected at random from the total of 42. Logical and reasonable assumption can be made therefore that the rest of the items also contained Cannabis.

As to Mr. James's argument to the suppression, the Court has already ruled on it.

MR. JAMES: It seems like to me then that what I think we should probably do in these cases is take one bale and take one sample and that would be representative of the entire ship, under this rationality we could just dispense with bringing any of the other in or weighing it or anything else, all we need is one sample, one known weight and that's representative of every bale that's on there. Counsel is right in the case of the Thire [sic] District which was a two to one decision, maybe they will get a chance to rectify, but that is in con-

flict with the other Districts, specifically with the Second District as to the weight and specifically to the Supreme Court as to the weight, he's right, two of the judges did decide as he indicated, but anyway that is my basis for objection.

THE COURT: State Composite Exhibit A for Identification is admitted into evidence as State Composite Exhibit 1; State Composite Exhibit B for Identification is admitted into evidence as State Composite Exhibit 2; State Composite Exhibit C for Identification is admitted into evidence as State Composite Exhibit 3; State Composite Exhibit D for Identification is admitted into evidence as State Composite Exhibit 4.

MR. JAMES: Your Honor, prior to the State resting, I'd like to make another motion. I would move at this time to

strike followed by a motion for a mistrial in that the State went into testimony of Mark Walker at some great length of advising Mr. Garcia and Mr. Casal of their Miranda rights, and went into quite some detail and I submit that this was in error since the State and everybody knew that there had been no statements made by Mr. Casal and therefore this brought undue attention, the State did not repeat this mistake with Mr. Valdes, Mr. Valdes's testimony was simply to the rights of Mr. Casal, whatever statement Mr. Casal made, as I recall Mr. Walker, he testified this morning that he warned both defendants of their rights, then they got into a conversation concerning what Mr. Garcia said, I submit that this was improper bringing of attention on the rights of Mr. Casal going through when the witness and the

State they had not made the statement going through and prejudicing the Jury by telling them all the rights they told them and then not coming forth with any statement, I submit that it was indirect, impermissible direction of attention upon the non-statement of Mr. Constantino Casal.

THE COURT: You're not saying Counsel that there is some statement made referring to his failure to make a statement?

MR. JAMES: No, sir, I said exactly what I wanted to say, sir.

THE COURT: I realize you said what you wanted to say but I'm asking you if your argument is that some statement was made concerning Casal, I didn't hear it.

MR. JAMES: As I understand, in the case law of this State, what you cannot do directly cannot do indirectly, I submit the cases say that when this

situation has come forth, that you're not allowed to get up and say, 'well, I warned the Defendant of this Miranda right, this Miranda right, and that Miranda right', and you didn't have to complete it by saying and 'he didn't say anything', when you do that, that Jury is smart enough to know that he didn't make any statement, and when you know he didn't make a statement it's improper to go through the warning of the rights and prejudice the Jury that very way, that's what cases say.

THE COURT: What says the State.

MR. FOWLER: Your Honor, in no way did the State attempt to make a comment on Mr. Casal's silence, there was simple recitation of exactly what happened, the predicate was layed [sic], as to the statement made by Mr. Garcia. As to Mr. James's concern for any inference

the Jury might have, there was nothing said at all regarding Mr. Casal in that particular incident, the only reference made to Mr. Casal was in fact by Detective Valdes who testified from the stand that Mr. Casal spoke no English. So, if anything, we are going to be in a position where Mr. Casal wouldn't be expected to say anything because he spoke no English.

THE COURT: Anthing else?

MR. JAMES: That's it, sir.

THE COURT: Motion denied.

MR. JAMES: Sir, I made two motions, motion to strike and motion for a mistrial.

THE COURT: They are both denied.

MR. FOWLER: Your Honor, the State would rest at this particular point.

THE COURT: Do you have a motion now that the State rest?

MR. JAMES: Yes, sir.

THE COURT: You want to make your motion now, or not?

MR. JAMES: Yes, sir, if I can have a couple of minutes to line up my witness.

THE COURT: I don't care, I'm just asking you.

MR. JAMES: Yes, sir.

THE COURT: You'll make it now rather than when the Jury is brought back in.

MR. JAMES: Yes, sir. Your Honor, I move for a verdict of acquittal as to both of the defendants, Mr. Casal and Mr. Garcia, I submit that there is insufficient and inadequate amount of evidence to go to the Jury. I rest on that.

THE COURT: What says the State?

MR. FOWLER: Your Honor, the State feels that the record will speak for itself and the matter should be sub-

mitted to the Jury.

THE COURT: Motion denied. Bring in the Jury.

MR. JAMES: Your Honor, I request before we get started I can have the five minutes to get my side of the case ready.

THE COURT: All right, we'll just leave the Jury where they are and give you five minutes to get ready, then we'll come in and I'll announce to the Jury the admission of evidence and you'll rest, we'll go ahead. It being agreed that your motion was timely made.

MR. JAMES: Yes, sir.

Thereupon, Court recessed and reconvened in five minutes.

THE COURT: Is Defense ready?

MR. JAMES: Yes, sir.

THE COURT: Bring in the Jury, please.

Thereupon Jury returned to the court-

room and took their respective seats in the jurybox.

BAILIFF: The Jury is present, Your Honor.

THE COURT: Ladies and gentlemen of the Jury, before you were sent to the juryroom the State had offered into evidence State Exhibits A, B, C, and D, for Identification, the Court has admitted into evidence those exhibits as State Exhibit 1, 2, 3, and 4. State call its next witness.

MR. FOWLER: Your Honor, at this time the State will rest.

MR. JAMES: Your Honor, the Defense would renew all motions.

THE COURT: I'll make my notes accordingly.

MR. JAMES: Thank you.

THE COURT: Ladies and gentlemen, we now come to the Defendants [sic] side of

the case, Counsel for the Defendant reserved his opening statement until this time, you may now proceed with your opening statement.

MR. JAMES: Your Honor, we call Irving Higgs for our first witness and waive opening statement, if it please the Court.

THE COURT: All right, sir.

THEREUPON, IRVING HIGGS was called as a witness for the Defense and after being dly sworn, testified as follows:

DIRECT EXAMINATION BY MR. JAMES:

Q. Please state your full name, sir?

A. Irving Albert Higgs.

Q. Occupation?

A. Property Appraiser, Monroe County.

Q. How long have you been with that office?

A. Approximately 13 years.

Q. And you've been the property

appraiser for the last couple of years?

A. Yes, sir.

Q. Did you bring something to court on my direction?

A. Yes, sir.

MR. JAMES: Your Honor, upon stipulation with the State, the Defense on behalf of Defendant Casal would now ask that this be marked and received as the State stipulated, these 3 charts or diagrams that Mr. Higgs has brought with him may be so received.

THE COURT: What says the State.

MR. FOWLER: The State has no objections.

THE COURT: Will be admitted, is that the agreement?

MR. JAMES: Yes, sir. We can mark it composite exhibit, if you wish, there are 3 pieces, sir.

THE COURT: All right, by stipulation

the exhibit proffered by the Defense as to Defendant Casal is admitted into evidence as Defendant Casal's Exhibit 1.

Q. Mr. Higgs, will you now correlate your testimony with Casal Exhibit 1 in evidence and will you please tell me what that is?

A. This is the general highway map of Monroe County, Florida, dated February, 1966.

Q. Okay, flipping through the third page of the exhibit, will you tell me what specific area, what that shows, if anything?

A. The lower part of the Florida Keys, Monroe County.

Q. Okay, and that shows the Monroe County where it exist, is that correct?

A. Right.

Q. Now, that it has been received into evidence, will you step over to the

Jury box for the next question, I want you to show the Jury where the seaward boundary, the ocean side boundary of Monroe County is, step over to the jury-box so you can show them, please.

A. Right here in the lower keys, one particular item that I would have on the tax roll for tax purposes would be right her [sic] in Logger Key, looking at this island here, this is off shore [sic] of the Florida Keys, off of Cudjoe Key.

Q. That is the last property or land that you have...

A. On the county tax roll for tax purposes.

Q. On the ocean side, correct?

A. Yes.

Q. Now, other than that piece of property, can you tell us specifically where the boundary of Monroe County ends on the ocean side?

A. No, sir, I can't.

Q. So all you can say for sure you know it goes as far as this, because that's in your tax roll, correct?

A. Yes, sir.

Q. To Logger Head, you cannot tell where else at all is Monroe County, where it is and where it isn't, right?

A. The island itself I have on the tax roll, the boundary of the county, there is no distinction on the map as to where the boundary is.

Q. Okay.

A. The island is on the Monroe County tax roll.

MR. JAMES: Thank you, I have no further questions.

THE COURT: Cross examination.

MR. FOWLER: Yes, sir.

THEREUPON, CROSS EXAMINATION BY MR. FOWLER:

Q. Mr. Higgs, I note that's a highway map.

A. Yes, sir.

Q. You use that for the purposes of your tax roll?

A. Yes, sir.

Q. Is that the primary purpose of that particular map?

A. For tax purposes, location of the Outward Islands for tax purposes, yes.

Q. Unless you have some taxable interest in something on that particular map you wouldn't necessarily be concerned with it, is that correct?

A. That's right.

MR. FOWLER: Thank you, sir.

THEREUPON, REDIRECT EXAMINATION BY MR. JAMES:

Q. Mr. Higgs, you're a duly elected and is not your job and function to tax and know the location of all properties,

islands, what have you, located within the boundaries of Monroe County, Florida?

A. Will you repeat that question?

Q. Isn't it the function of your job to list on the tax roll all properties located, even Governmental properties appear here, even Governmental owned islands within the compounds of Monroe County appear exempt but they appear in the tax roll, correct?

A. That's right.

Q. So it doesn't matter the type of ownership, if it's private or Governmental, we may not collect any taxes on it, what to you call it, an exemption?

A. It is an exemption, the piece of property is exempted but my job is to list all properties whether they be taxable or nontaxable.

Q. And this map that you brought

shows what is Monroe County and what's not Monroe County?

A. Right.

MR. JAMES: Thank you.

THE COURT: Recross?

MR. FOWLER: No, sir.

THE COURT: The witness may step down. Call your next witness.

MR. JAMES: The Defense rests.

THE COURT: Does the State rest its entire case?

MR. FOWLER: Yes, sir.

THE COURT: Ladies and gentlemen of the Jury, we have arrived at one of those times where the proceedings take place outside your presence, so we might as well send you to an early lunch. So, you're excused for lunch, again let me remind you of my admonishments yesterday about talking to anybody, letting anybody talk to you and all that sort of thing.

I ask that you be back in the jury-room at one o'clock.

Thereupon, Jury left courtroom.

MR. JAMES: Your Honor, I offer a stipulation to the State, I renew all my prior motions and objections including the motion for judgement [sic] of acquittal and I adopt by reference to all arguments previously made during, in behalf of the motion to suppress evidence, motion to suppress confession and...

THE COURT: I'm not going to rule on everything that I ruled on before.

MR. JAMES: All I can do is make my motion and let the Court do whatever it wishes and act according, sir.

THE COURT: The State has anything else?

MR. FOWLER: No, Your Honor.

THE COURT: The renewed motion for

motion for judgement [sic] of acquittal is denied.

. . . .